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# Interstate Commerce Law

## PART IV

### *Practice and Procedure of Commission Appendices*

Prepared under the direction of the *Advisory Traffic Council of  
The American Commerce Association*

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By EDWARD J. MARTIN, LL. B.

---

ELVIN S. KETCHUM, A. B., Pd. M.

*Editor-in-Chief*

Originator of Systematic and Scientific Training  
in Practical Traffic Work

---

EDWARD G. WARD

*Editorial Director*

Former President and Editor-in-Chief of the Railway World; also formerly with the Interstate Commerce Commission; also with the U. S. Department of Agriculture as Transportation Expert and with the U. S. Department of Commerce and Labor as Internal Commerce Expert.



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## PREFACE

**T**HROUGHOUT the preceding three parts of "Interstate Commerce Law" the scope and validity of the Act to Regulate Commerce, and of its amendatory and supplemental acts, have been explained in detail. In order that the extraordinary powers established by Congress through these regulatory laws might be properly administered and enforced in the maze of transportation and shipping conditions, the Act to Regulate Commerce provides for the creation and maintenance of the "Interstate Commerce Commission," a body now consisting of nine members, invested with the necessary authority and charged with the obligation to give the intended force and effect to these laws. The powers vested in the Commission are limited by the terms and spirit of the Act by which they are conferred and delegated.

The duties of the Commission are divided into two distinct branches—(1) its administrative duties wherein it exercises certain functions of administration and adopts forms and procedure similar to those in use by courts in enforcing the judicial procedure of the general government; and (2) certain delegated legislative powers which it exercises in prescribing rules, regulations, and transportation rates for the future.

In this volume, Part IV of "Interstate Commerce Law," is presented a complete analysis of the functions of the administrative machinery which the national government has established for the efficient enforcement of its transportation legislation, with comprehensive descriptions of the departmental organization of the Interstate Commerce Commission, its special working divisions, and the rules of practice and procedure which the Commission has adopted and employs in the administration of its affairs and duties.

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## CHAPTER I.

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**CHAPTER I.**  
**THE INTERSTATE COMMERCE COMMISSION.**  
**GENERAL ORGANIZATION.**

**§ 1. Nature of General Powers exercised by the Interstate Commerce Commission.**

The Interstate Commerce Commission is created by statute and its power and authority must be strictly construed from the language of the Act to Regulate Commerce, its creative act. It can assume to itself no implied powers. It is a body corporate, with legal capacity to sue and be sued in its corporate name. It is an administrative agency or department of the general government charged with the general duty to investigate the conditions and practices surrounding the transportation function in interstate commerce.

Its corporate nature aptly illustrates the elasticity in scope of the authority of the federal government. It is an aged and popular conception that the three great functions of the central government—namely, the executive, legislative and judicial departments—are separate and distinct, without comity or interdependence. But the Interstate Commerce Commission exercises powers incidental, if not directly related, to each of these federal functions of the government. It exercises the executive power of investigation; a quasi-judicial function in finding a rate or regulation unreasonable or in the suspension of increased rates pending investigation thereof, or in determining a regulation or practice to be unduly discriminatory or preferential and awarding damages on account thereof; and a legislative authority, in declaring and fixing maximum rates for the future.

Maximum Rate Cases, 167 U. S. 479.  
Virginia Rate Cases, 211 U. S. 210.

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Prior to the Hepburn (1906) and 1910 amendments, the scope of the Commission's powers and authority was materially less than at the present time. The amendments of 1906 and 1910 gave breath and conclusiveness to the authority of the Commission. Before 1906, the Commission could conduct investigations, declare findings of fact, and offer recommendations curative of evils pronounced by its conclusions, but there its operations stopped for its authority was at an end. Its recommendations could only become effective through the action of the courts. But today the Commission may exercise a **quasi-judicial** power in determining the propriety of rates and practices or in suspending proposed increases in rates pending its investigation of them and in fixing in lieu thereof rates and regulations for the future, and, unless set aside by order of some competent court, whose jurisdiction is invoked by the party against whom the Commission's order is made, its order is primarily enforceable through the effect of the penalties provided for in the Act.

The distinction is sometimes made that the function of the Commission in conducting an investigation is both **quasi-judicial** and administrative, but while the function may be of a **semi** or **quasi-judicial** nature, the proceeding itself is not a judicial one, in the sense of proceedings in courts of general jurisdiction.

I. C. C. vs. L. & N. R. R. Co., 73 Fed. Rep. 409, 414.  
(Same case in 5 Int. Com. Rep. 656, 661 [1896].)

While the dictum of the court in the Kentucky & Indiana Bridge Company case, 37 Fed. Rep. 567, 2 Int. Com. Rep. 351, 380 (1889), that the Commission is neither a federal court under the Constitution nor does it exercise judicial powers, nor do its conclusions possess the efficacy of judicial proceedings," is academically true, it would seem paradoxical in view of the practical effectiveness now given to

the orders of the Commission by the general obedience of the affected parties. Nevertheless, the fact remains that proceedings before the Commission are not judicial, and unless compliance is voluntarily made, the order of the Commission therein is only enforceable through courts of competent jurisdiction. It was also stated by the court in the Kentucky & Indiana Bridge Company case, *supra*, that the Commission, as to matters of interstate commerce within the purview of the Act, might be regarded as a general referee to each and every Circuit Court of the United States under the jurisdiction which is conferred of enforcing the rights, duties and obligation recognized and enforceable by the Act, but the amendments of 1910 have broadened it out into an administrative and inquisitorial tribunal. The authority vested in the Commission cannot exceed that derived from the Act to Regulate Commerce or Acts of Congress supplementary thereto or amendatory thereof.

## **§ 2. Commission not a Court; an Expert Technical Tribunal.**

The Congress has power to create inferior courts, but the Act to Regulate Commerce in no wise indicates any exercise of that power. The primary prerequisite to the establishment of inferior courts by Congress is the conference upon the judges thereof, of the constitutional tenure of office during good behavior. This constitutional investiture is absolutely essential before the judges appointed to administer an inferior court can exercise any part of the judicial power. This is lacking in the Act to Regulate Congress, or in any of the Acts amendatory thereof. Congress neither attempted to create an inferior court nor to clothe with judicial authority, the commissioners it provided to administer the Act. The Commission is

an agency of the government created for the accomplishment of a given purpose—that of inquiring into facts relating to commercial intercourse between the states, exercising supervision over certain acts in the conduct of interstate commerce, and administering the functions of the Act to bring about, if necessary, the final enforcement by the courts of the remedial features of the statute. Its administrative and inquisitorial powers make it a tribunal where the shipper may give complaint to his grievances, where the accused carrier may be heard, and where a finding of fact may be had as to the existence, or non-existence, and nature of the act or omission complained of. The conclusive remedy for the evils contemplated by the Act, and found to exist by the Commission, remains with the Courts and beyond any power of the Commission itself to enforce. The Commission is given an original jurisdiction by inquiry and finding of fact to lay the premise for the ultimate and conclusive jurisdiction of a court of equity.

U. S. vs. M. C. R. R. Co., 122 Fed. Rep. 544.  
R. R. Com. of Ohio vs. W. & L. E. R. R. Co., 12 I. C. C. Rep. 398.

Neither has it a common law jurisdiction; it can only exercise the precise jurisdiction conferred upon it by the statute of which it is the creature.

The very nature of the things the Commission is empowered to investigate and supervise, renders it essential that the Commission shall acquire special and technical knowledge and information relating thereto; and particularly in relation to transportation rates and practices, it becomes an expert and technical tribunal or body.

I. C. C. vs. L. & N. R. R. Co., et al., 118 Fed. Rep. 613.

As such tribunal, it is charged primarily with administrative duties. The quasi-judicial or legislative nature of any of the powers it is authorized to exercise, is only to

such extent as may be necessary to give effectiveness to and accomplish the contemplated purposes of the Act in the exercise of its purely administrative functions. "It can hear and determine, ascertain and declare the truth, but its findings, conclusions and orders can only be enforced through the decisions and judgments of the courts made and rendered after trial in accordance with established judicial procedure."

Re Rates on Food Products, 3 Int. Com. Rep. 93, 111, 151.  
(Same case, 4 I. C. C. Rep. 48.)

In the cases of the Cincinnati, New Orleans and Texas Pacific Railroad Company vs. The Interstate Commerce Commission, in 162 U. S. 184, and the Commission against the same Company in 167 U. S. 479, the Commission is termed in the dictum of the court an "administrative board."

Since the passage of the Hepburn Act in 1906, the Commission has declared itself to be an administrative body; a "special tribunal whose duties, though largely administrative, are sometimes semi-judicial," but "not a court empowered to render judgment and enter decrees."

Snyder, in his "Annotated Interstate Commerce Act" (supplement, p. 87), declares the Commission to be "no longer an inquisitorial and advisory body. It is an investigating and prosecuting body, clothed with authority to enforce these (its) orders."

Again, referring to its legal nature, the Commission in 12 I. C. C. Rep. 398, said that "there is an analogy between the jurisdiction of the Commission and that of a court of equity."

The nature of the procedure in investigations and inquiries conducted by the Commission, and its report thereon, is often times confounded in the mind of the layman with that of a judicial proceeding, and, indeed, it is true



that the procedure of the Commission, in order to accomplish the purposes it is charged with fulfilling, must conform substantially with that of a court of equity. This similarity in procedure is recognized by the Commission, as we have noted above. It is of the same nature as the procedure in a primary hearing and report by a special master-in-chancery or referee appointed by a court to report and pass upon the facts and the law subject to the conclusive action of the court.

I. C. C. vs. L. & N. R. R. Co., 73 Fed. 409; 5 I. C. C. 656.

When the Commission has found the facts, it reports thereon and makes an order, but the final action of the Commission is neither termed a judgment nor the entering of a decree by a court.

In the first Western Rate Advanced Case the Commission, in commenting upon its legal status, said:

"It must be borne in mind that this Commission is not a court of law; its function is to apply the mandatory and restrictive provisions of the act to regulate commerce to stated conditions of fact. We must regard the problems presented to us from as many standpoints as there are public interests involved. The making of a rate is in ultimate analysis the exercise of a taxing power on commerce. 73 Fed. 409. The reasonableness of a rate is to be determined by no mere mathematical calculation, though figures of cost and revenue must play a not inconsiderable part in arriving at a final judgment. Wise men may differ as to what a 'just and reasonable rate' is under given conditions. The courts recognize that there is abundant play for what the present Chief Justice so admirably described as 'the flexible limit of judgment which belongs to the power to make rates.' 206 U. S. 26. The unrestricted power to make rates, however, should not rest in the hands of those whose tendency must be, by reason of human nature, to exact to the limit the



highest return that can be procured. Reasons of public policy demand that there shall be a check placed upon a power which may be perverted and thus brought to restrict and embarrass commerce rather than increase and develop it. Every rate question, therefore, is a public question—this is the underlying principle of the act to regulate commerce, and of all similar legislation controlling public utilities. An examination into the specific provisions of the act, especially into those of section 13, will make clear to the candid mind that a complaint before this Commission was not intended to be regarded in the same strict and hard light as a complaint in an action at law, but was to be regarded as an appeal to the Government against oppressive, unjust, and illegal action. A shipper may not dismiss his complaint without consent. The fact that he has no interest in the traffic concerned in his complaint does not 'put him out of court.' These and similar provisions indicate that the purpose of Congress in enacting the act to regulate commerce was to establish a body whose function it should be to protect the public interest and not merely regard the technical rights of an individual shipper, and in this view of the law the act has been administered by the Commission. In accepting this theory, therefore, it is not within belief that Congress intended by the language now under consideration to convert this Commission into a tribunal which should merely determine as between two sides the preponderance of evidence and base its decisions upon technical and somewhat archaic rules of evidence."

Advances in Rates—Western Case, 20 I. C. C. Rep. 307, 315.

By its decision in the Abilene Cotton Oil case, and in the Illinois Central case, the Supreme Court erected the Interstate Commerce Commission into what has been termed "an economic court" or to give it a more liberal definition, but one perhaps of stricter legal analogy, a select jury to pass upon the reasonableness and justness

of railroad rates, rules, and practices. Within broad lines of discretion, the courts regard the conclusions of the Commission on questions of fact as final. There is an appeal upon the questions of law by the carriers to the courts, but unless a constitutional guaranty is violated, the order of the Commission is final, provided, of course, the Commission does not overstep the jurisdictional limits placed upon it by the statute. And as to the shipper, this tribunal is his one and only resort against certain transportation injustice.

T. & P. Ry. Co. vs. Abilene Cotton Oil Co., 204 U. S. 426.  
I. C. C. vs. I. C. R. R. Co., 215 U. S. 452.  
Advances in Rates—Western Case 20, I. C. C. Rep. 307, 317.

See also:

Mills vs. L. V. R. R. Co., 238 U. S. 473.  
Penn. R. R. Co. vs. Clark Bros. Coal Min. Co., 238 U. S. 456.  
Penn. R. R. Co. vs. I. C. C., 230 U. S. 184.  
Penn. R. R. Co. vs. Puritan Coal Co., 237 U. S. 121.  
Morrisdale Coal Co. vs. Penn. R. R. Co., 230 U. S. 304.  
Mitchell Coal Co. vs. Penn. R. R. Co., 230 U. S. 247.  
Weinman vs. De Palma 232 U. S. 571.  
Robinson vs. B. & O. Ry. Co., 222 U. S. 506.  
B. & O. R. R. Co. vs. U. S. 215 U. S. 481.  
I. C. C. vs. I. C. R. R. Co., 215 U. S. 452.  
Joynes vs. Penn. R. R. Co., 17 I. C. C. Rep. 361.

Compare:

Hillsdale Coal & Coke Co. vs. Penn. R. R. Co., 19 I. C. C. Rep. 356.  
Jacoby vs. Penn. R. R. Co., 19 I. C. C. Rep. 392.  
Clark Bros. Coal Mining Co. vs. Penn. R. R. Co., 19 I. C. C. Rep. 392.  
Bulah Coal Co. vs. Penn. R. R. Co., 20 I. C. C. Rep. 52.  
Hillsdale Coal & Coke Co. vs. Penn. R. R. Co., 23 I. C. C. Rep. 186 (where the Commission awarded general damages to test its authority).

### § 3. Original Jurisdiction of Interstate Commerce Commission.

The Interstate Commerce Commission alone has original jurisdiction to determine whether an existing rate schedule, or an existing regulation or practice of any kind affecting

matters sought to be regulated by the Act, is unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, and the courts cannot by mandamus, injunction or otherwise control or modify any order of the Commission made by it in the due performance of its merely administrative functions.

*Morrisdale Coal Co. vs. Penn. R. R. Co.*, 183 Fed. Rep. 929.

See also:

*Morrisdale Coal Co. vs. Penn. R. R. Co.*, 230 U. S. 304.

While the Abilene case settles the primary jurisdiction of the Commission to determine the reasonableness of an established rate and to award reparation predicated upon the unreasonableness of an established rate, its jurisdiction is also primary in matters of unjust discrimination, undue or unreasonable preference or advantage, undue or unreasonable prejudice or disadvantage, and generally whenever the Commission may order the carrier to cease and desist from violations of the Act. As said in the case of the Railroad Commission of Ohio et al. vs. H. V. Ry. Co., 12 I. C. C. Rep. 398:

“Every reason advanced by the Supreme Court in support of the conclusion that the lower court had not original jurisdiction in rate matters appears to apply with equal force to our view that this Commission has original jurisdiction of questions of discriminatory practices prohibited by the Act to Regulate Commerce.”

Many matters that appear to involve discrimination only, do affect and involve the rates and charges paid by the shipper.

The Commission has jurisdiction primarily to consider the questions of unjust discrimination, undue or unreasonable preference or advantages to persons, localities, or par-

ticular descriptions of traffic, etc., and it also has jurisdiction to award reparation or damages in connection therewith when properly proved. The Commission, in passing upon the reasonableness or unreasonableness of a rate, acts as an administrative body having quasi-judicial functions; when it determines what the rate should have been and shall be in the future, it exercises certain legislative functions; when it computes the damages or reparation due the shipper by reason of the enforcement and collection of a rate unreasonable to the extent that it exceeds a rate which is declared to be reasonable, there is a mere mathematical determination of the damages the shipper should receive. Reparation or damages, therefore, in all matters which concern rates are reduced, after the Commission has determined what the reasonable rate should have been, to the simplicity of a mathematical calculation; elements of conjecture, speculation, and inference are entirely eliminated.

Washer Grain Co. vs. Mo. Pac. Ry. Co., 15 I. C. C. Rep. 147, 156, 157.

It is the design of the Act to Regulate Commerce to have the Commission pass primarily upon the questions involved in a particular rate or practice. As an administrative body, it passes upon all claims to the end that it, as such body, may make, in each case, appropriate order for reparation. Shippers seeking reparation predicated upon the unreasonableness of a published rate, must originally invoke redress through the Commission. For it is the Commission alone that is invested with power to entertain original proceedings for the alteration of an established rate schedule, notwithstanding the fact that sections 9 and 22 of the Act apparently give the injured party the option of bringing suit primarily in the federal courts, to recover damages for violations of the Act.

National Pole Co. vs. C. & N. W. Ry. Co., 200 Fed. Rep. 989, 996.

American Sugar Refining Co. vs. D. L. & W. Ry. Co., 200 Fed. Rep. 652, 654.

The Commission has no common-law jurisdiction, but it may draw upon the wisdom of the common-law for guidance as an administrative and quasi-judicial body, but its authority to act rests wholly upon the provisions of the Act to Regulate Commerce, as amended. As an administrative body, it is not necessarily controlled by the general rule that a tribunal, whose authority is invoked by complaint filed before it, must determine whether the subject matter is within its jurisdiction before it may consider the merits of the controversy; and that affirmative relief may not be granted in any case unless jurisdiction over the subject matter is definitely ascertained.

Corp. Comm. of Oklahoma vs. A. T. & S. F. Ry. Co., 25 I. C. C. Rep. 120, 121.

Jones vs. St. L. & S. F. R. R. Co., 12 I. C. C. Rep. 144.

The Interstate Commerce Commission has held that it has jurisdiction over and authority to require carriers to furnish all necessary equipment, both ordinary and special, upon reasonable request therefor by shippers.

Pennsylvania Paraffine Works vs. Penn. R. R. Co., 34 I. C. C. Rep. 179.

Vulcan Coal & Mining Co. vs. I. C. R. R. Co., 33 I. C. C. Rep. 52.

The obvious interpretation of this holding of the Commission is that the carrier can, on the order of the Commission, be compelled to acquire new equipment and facilities. The defendants in the Paraffine Works case, *supra*, filed a bill for injunction of the Commission's order, and the United States District Court for the Western District of Pennsylvania enjoined the Commission's order holding in the following language, that the Commission had exceeded its statutory power:

"The law clearly confers upon the Commission power to so regulate the use of the facilities possessed by the carrier that there shall be no unjust discrimination, but we find nothing in the law which confers upon the Commission power to compel a carrier to acquire facilities it does not possess, or to acquire better facilities than those it possesses, not with the object of preventing discrimination and preferences, but in order that the shipper may have larger, better, and perhaps more economical facilities. We are of opinion that in making the order the Interstate Commerce Commission exceeded its statutory power, and that the order should be suspended and annulled."

Pennsylvania R. R. Co. vs. I. C. C., 227 Fed. Rep. 911.

As this is one of the most important jurisdictional questions to arise under the Commission's enlarged powers, derived from recent amendments to the Act to Regulate Commerce, the administrative views of the Commission respecting its possession of the power to require carriers to acquire adequate transportation facilities are important. These views of the Commission are set forth in its opinion in the Paraffine Works case, *supra*, thus:

"Section 1 of the act provides that—

"\* \* \* the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor \* \* \*".



“Section 12 of the act provides:

“‘\* \* \* the Commission is hereby authorized and required to execute and enforce the provisions of this act. \* \* \*’

“And section 15 provides:

“‘That whenever, after full hearing upon a complaint made as provided in section 13 of this act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the Commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of the act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged and what individual or joint classification, regulation, or practice is just, fair, and reasonable to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the

maximum rate of charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.'

"The provisions of section 1 quoted above were inserted by the amendment of 1906; those of section 12 were added by the amendment of 1889; and section 15 was given its present form by the amendment of 1910, having previously been amended in 1906. Attention is called to these amendments because under the act, as originally passed, the Commission did not have jurisdiction to require carriers to provide proper and adequate car equipment. *Scofield vs. L. S. & M. S. Ry. Co.*, 2 I. C. C. 90; *Rice vs. C., W. & B. Ry. Co.*, 3 I. C. C. 186; *Re Transportation, etc., of Fruit*, 10 I. C. C. 360.

"The question of the Commission's jurisdiction under the amended law was not brought before us until very recently. In *Vulcan Coal & Mining Co. vs. I. C. R. R. Co.*, 33 I. C. C. 52, we were asked to award damages due to a carrier's alleged failure to supply cars to certain coal mines upon a reasonable request. The defendant in that case also denied the Commission's jurisdiction. We held that the question presented was properly before us on the ground that the determination of damages necessitated the prior determination of the extent to which defendant failed to comply with the duty it owed complainants to furnish cars upon reasonable request therefor, which we held to be an administrative question of which this Commission alone can take original jurisdiction.

"Defendant's first argument is that it was not the intention of Congress in passing the act to regulate commerce and amendments thereto to forbid the operation of private car lines or the ownership of cars by shippers.

"Defendant first calls attention to the fact that at the time of the consideration of this amendment, the private ownership of railroad cars, including tank cars used in the transportation of oil, had continued



for many years and was well known to the public, to the Commission, and to Congress. Moreover, in the hearings held during 1905 and 1906 with reference to the proposed amendments to the act, this subject was brought to the direct attention of the Senate Committee on Interstate Commerce by many witnesses. Many cases of discrimination and rebates at that time occurred in connection with private car lines, and some shippers went so far as to demand that the act be so amended as to 'forbid all carriers hauling cars carrying freight of any and every description that are not owned by and controlled by such carriers themselves or by other carriers, bona fide such, and not created or existing for any other purpose.'

"After quoting several excerpts from the debates in Congress on the amendment of 1906, defendant argues that if Congress had intended to require the railroads to take over the privately owned cars to confer upon the Commission power to promulgate such a requirement it is inconceivable that the long debate on this amendment should disclose no intimation of this purpose. The following quotation from defendant's brief clearly shows the position taken:

"In view of the prevalence of the private ownership of cars, and in the light of the foregoing evidence with reference to the proceedings before the Senate Committee and in Congress, it is impossible to believe that the Hepburn amendment was intended to change the degree of the obligation of the carriers with respect to furnishing the equipment for the transportation of commodities which were partly or largely transported in privately owned cars of a special description. Certainly, if the Congress of the United States had intended any change of such profound magnitude, and had intended to endow the Commission with a power which the Commission had already decided it did not have, the provisions to this end would have been much

more specific and definite than the provisions on which the complainants rely.'

"Defendant's argument is based upon the supposition that the interpretation which complainants seek to place upon the provisions of the act under discussion, by which the jurisdiction of the Commission in the present case is sought to be upheld, would require the railroads to take over the privately owned cars or confer upon the Commission power to promulgate such a requirement. This, however, would not necessarily be the case. Section 1 of the act provides that it shall be the duty of every carrier subject to the provisions of the act 'to provide and furnish' transportation, including cars, upon reasonable request therefor. This does not require the carriers' ownership of cars, but places upon them the duty to provide cars, which may be cars of their own or cars which they have secured in some other manner. The carriers, subject to the act, are to obtain and have ready for future use 'all cars and other vehicles and all instrumentalities and facilities of shipment or carriage,' and furnish the same upon reasonable request. The power of the Commission to require the carriers to comply with their duty is subject only to the proviso that the request for 'cars and other vehicles' and the 'instrumentalities' and 'facilities' of transportation shall be reasonable. Whether or not a particular request is reasonable is a matter for this Commission to decide in each particular case.

"Defendant calls attention to a provision of its charter whereby it is required to permit its rails to be used as a public highway for the movement of privately owned cars. *Boyle vs. P. & R. Ry. Co.*, 54 Pa. 310; *Hillsdale Coal & Coke Co. vs. P. R. R. Co.*, 19 I. C. C. 356. In the light of what has been said above, it is evident that this provision of defendant's charter in no way conflicts with granting the relief prayed for.

"It is further argued by the defendant that the requirement of section 1 to furnish transportation

upon reasonable request was intended to transmute into an obligation under federal law the common-law obligation of the carrier in this regard, and it is stated that there never was an obligation at the common law to supply a vehicle of a particular form or description when such form or description had no reference to the safety of transportation. Defendant states that so long as there is no unreasonableness or discrimination in the rates and so long as the carrier's equipment is adapted to the safe transportation of the goods intrusted to it, there is nothing in section 1 which in any way restricts the right of the carrier to choose and select the vehicle of transportation which it regards most satisfactory for the conduct of its business.

"As bearing upon this point, it should first be stated that defendant holds itself out to transport oil in bulk. It not only publishes rates for the transportation of oil in tank cars but owns tank cars and supplies shippers with them. It leases cars owned by companies engaged in refining oil and transports their products in those cars at the rates it publishes for the movement by rail of oil in tank cars. It certainly can not be contended that the transportation by rail of oil in bulk could be attempted safely in any equipment other than tank cars.

"Whatever the obligation of the carriers may have been under the common law, the requirements of the act are plainly more comprehensive than defendant contends. It is, of course, plain that the extent of defendant's obligation at common law is not determinative of its extent under the statute.

"However, in further support of its argument that the requirements of section 1 to furnish transportation upon reasonable request were merely intended to transmute into an obligation under federal law the common-law obligation of the carrier, defendant calls attention to the safety appliance acts, which it is stated indicate that when Congress contemplates the imposition of obligations with respect to the equip-

ment of carriers it covers the subject by careful specific rules. Defendant argues that if it had been the intention of Congress to endow the Commission with the power to require the purchase of equipment of specialized character Congress would have defined the manner in which and the extent to which this power might be exercised. Attention is also called to the Commission's recommendation, in its last report to Congress, that carriers be required to furnish steel coaches for passenger traffic, and it is argued that this is an admission of its lack of jurisdiction over matters concerning a carrier's equipment. If the Commission can require carriers to furnish tank cars for the movement of oil, defendant contends, it certainly must have jurisdiction to require them to furnish steel passenger coaches.

"The attempted analogy does not exist. The power to require proper and adequate cars for the transportation of passengers, or of oil in bulk, is one thing. The power to require that such cars be of peculiar or especial design, pattern, or material is quite another thing. At common law shippers had a present remedy in the courts by suit for damages in case of a carrier's failure to perform its duty to transport safely. One of the conditions, however, which led to the passage of the act to regulate commerce and of the amendments thereto was the inability of shippers to find a present remedy in the case of rates charged for transportation of goods or regulations or practices affecting such transportation which were unjust, unreasonable, or discriminatory. And, as clearly appears from a reading of the provisions which were added by the amendment of 1906, to which reference has been made above, Congress at that time had in mind giving shippers a more adequate remedy in case the facilities for transportation were inadequate.

"It is further contended by defendant that even if the act to regulate commerce declares the duty of carriers to provide special equipment it does not invest

this Commission with power to require the purchase of additional cars. It is stated that while the Commission is charged with the enforcement of the act to regulate commerce its powers in cases coming up for decision after hearing on complaints, as provided in section 13, are fully defined in sections 15 and 16, which authorize the Commission—

“‘\* \* \* to determine and prescribe  
\* \* \* the just and reasonable \* \* \* rate  
or rates \* \* \* to be thereafter observed  
\* \* \* and what \* \* \* regulation or  
practice is just, fair, and reasonable to be there-  
after followed, and to make an order that the  
carrier or carriers shall \* \* \* conform to  
and observe the regulation or practice so pre-  
scribed.’

“Defendant contends that the present case involves no rate, regulation, or practice, arguing that if it be a practice within the meaning of the act for the carrier to furnish only 500 tank cars, it could be contended with equal reason that every detail of railroad operation is a practice within the meaning of the act. Practice, it is contended, connotes a continued method of operation and not merely a single act.

“While the act does not specify that this Commission should regulate every detail of railroad operation, we are required by its terms to determine whether any rate or any regulation or practice affecting transportation is just, reasonable, and nondiscriminatory. Among other things we are required to decide whether or not in specific cases carriers have complied with the requirements of the act to furnish adequate facilities upon reasonable request. In *Rail & River Coal Co. vs. B. & O. R. R. Co.*, 14 I. C. C. 86, the Commission said:

“‘\* \* \* the words “any regulations or practices whatsoever \* \* \* affecting such rates” are used synonymously with the words “regulation or practice in respect to such trans-



portation;" and \* \* \* both clauses are to be read in the widest possible sense and embrace all regulations and practices of carriers under which they offer their services to the shipping public and conduct their transportation. \* \* \*'

"In **Mobile Chamber of Commerce vs. M. & O. R. Co.**, 23 I. C. C. 417, after calling attention to the provisions of section 1, including the requirement that carriers shall furnish cars upon reasonable request therefor, the Commission said:

"\* \* \* Under section 15 as amended in 1910 the Commission is empowered to determine and prescribe what will be the just, fair, and reasonable regulation or practice which shall be thereafter followed by the carrier as to the services which the carrier is required to give under section 1.'

"In **Arlington Heights Fruit Exchange vs. S. P. Co.**, 20 I. C. C. 106, after calling attention to the relative advantages of precooling and standard refrigeration in the movement of citrus fruits from California to eastern markets, the Commission said:

"'Oranges can not be moved in box cars without ventilation. Let us assume that the ventilated car had been unknown and that the entire citrus-fruit crop had moved at all seasons of the year under refrigeration. It is discovered that by the use of a car so constructed that a current of air can be forced through the oranges by the motion of the car, two-thirds of the citrus-fruit crop can be transported without the expense of refrigeration. Could the defendants under these circumstances insist that all oranges should continue to move under refrigeration and would they rest under no obligation to provide ventilated cars?

"\* \* \* This vast tonnage should be handled in the most economical and satisfactory

manner, and these carriers should furnish for that movement such cars as will effectuate that purpose. They have a right to insist upon a proper compensation for supplying that equipment, but they have no right to say that old methods must continue in use and new methods held in abeyance rather than change the form of their cars.

“The carrier may insist upon furnishing all the equipment which is needed for the movement of precooled shipments and might decline to use equipment furnished by the shippers, but it can not refuse to furnish proper equipment upon fair terms; \* \* \*’.

“The carriers who were defendants in this case petitioned the Commerce Court to annul and set aside the Commission’s order. The Commerce Court approved the findings of the Commission and dismissed the complaint, whereupon the case was appealed to the United States Supreme Court, which held, **Atchison Ry. Co. vs. U. S.**, 232 U. S. 199:

“‘Whatever transportation service or facility the law requires the carrier to supply they have the right to furnish. They can therefore use their own cars, and can not be compelled to accept those tendered by the shipper on condition that a lower freight rate be charged. So, too, they can furnish all the ice needed in refrigeration, for this is not only a duty and a right, under the Hepburn act, but an economic necessity due to the fact that the carriers can not be expected to prepare to meet the demand, and then let the use of their plants depend upon haphazard calls, under which refrigeration can be demanded by all shippers at one time and by only a few at another.’

“And at page 217:

“‘Neither party has a right to insist upon a wasteful or expensive service for which the con-



sumer must ultimately pay. The interest of the public is to be considered as well as that of shippers and carriers \* \* \*’.

“In **C., R. I. & P. Ry. Co. vs. Hardwick Elevator Co.**, 226 U. S. 426, after referring to the provisions of section 1 of the act requiring carriers to furnish cars upon reasonable request, the United States Supreme Court said:

“‘Not only is there then a specific duty imposed to furnish cars for interstate traffic upon reasonable request therefor, but other applicable sections of the act to regulate commerce give remedies for the violation of that duty. \* \* \*’

“Attention should also be called to the following language used by the Commerce Court in **United States vs. L. & N. R. R. Co.**, 195 Fed., 88:

“‘This court has no jurisdiction to consider the question of car distribution in advance of some action by the Interstate Commerce Commission or to determine how many cars the Southern Railway shall furnish or how many the Louisville & Nashville Railroad shall furnish for the transportation of the petitioners’ coal. It is believed, however, that this court has the undoubted jurisdiction upon the facts presented by the record to issue a writ or writs of mandamus directed to these common carriers, commanding them that, so long as they establish and maintain through routes and joint rates to southeastern territory, they shall move and transport in interstate commerce the coal of the petitioners when tendered in such reasonable quantities as may be determined either by agreement with the carriers or by the Interstate Commerce Commission if they can not agree.’

“The United States Supreme Court has repeatedly stated that the whole scope of the act to regulate

commerce shows it to have been intended that this Commission and not the courts shall pass upon administrative questions. **T. & P. Ry. Co. vs. Abilene Cotton Oil Co.**, 204 U. S. 426; **B. & O. R. R. Co. vs. Pitcairn Coal Co.**, 215 U. S. 481; **Robinson vs. B. & O. R. R. Co.**, 222 U. S. 506; **United States vs. Pacific and Arctic Co.**, 228 U. S. 87; **P. R. R. Co. vs. International Coal Mining Co.**, 230 U. S. 184; **Mitchell Coal & Coke Co. vs. P. R. R. Co.**, 230 U. S. 247; **Morrisdale Coal Co. vs. P. R. R. Co.**, 230 U. S. 304; **S. Ry. Co. vs. Reid**, 222 U. S. 424; all of which are quoted from at length in **Vulcan Coal & Mining Co. vs. I. C. R. R. Co.**, *supra*.

"In **T. & P. Ry. Co. vs. Abilene Cotton Oil Co.**, 204 U. S. 426, 440, 441, it is stated that if, under the act to regulate commerce, the courts were given jurisdiction to determine the reasonableness of rates the result would be as follows:

"\* \* \* if, without previous action by the Commission, power might be exerted by courts and juries generally to determine the reasonableness of an established rate, it would follow that unless all courts reached an identical conclusion a uniform standard of rates in the future would be impossible, as the standard would fluctuate and vary, dependent upon the divergent conclusions reached as to reasonableness by the various courts called upon to consider the subject as an original question. Indeed, the recognition of such a right is wholly inconsistent with the administrative power conferred upon the Commission and with the duty, which the statute casts upon that body, of seeing to it that the statutory requirements as to uniformity and equality of rates is observed. Equally obvious is it that the existence of such a power in the courts, independent of prior action by the Commission, would lead to favoritism, to the enforcement of one rate in one jurisdiction and a different one in another, would

destroy the prohibitions against preferences and discrimination and afford, moreover, a ready means by which, through collusive proceedings, the wrongs which the statute was intended to remedy could be successfully inflicted.'

"Can it be doubted that if the courts were required to state what demands for cars are reasonable and when a carrier's equipment is adequate a similar lack of uniformity and like confusion would result?

"In **Vulcan Coal & Mining Co. vs. I. C. R. R. Co.**, *supra*, we said:

"Furthermore, one can not escape the conclusion that the question as to the extent to which defendant failed to comply with the duty it owed complainants to furnish cars upon reasonable request therefor is an administrative one of which the Commission alone can take original jurisdiction. This must be true unless it be the carrier's absolute duty to furnish cars at all times to the full extent of the shipper's demands. Only then would this complaint present a question like that considered in **P. R. R. Co. vs. International Coal Co.**, *supra*. It may be that after the determination by the Commission of the number of cars which the defendant should have furnished and of the times when it should have furnished them the courts would have concurrent jurisdiction with the Commission of the ascertainment of the damages suffered by complainants by reason of defendant's failure to perform that duty. However, it is not a carrier's duty to furnish all cars demanded at all times. In substance section 1 provides that **upon reasonable request** it shall be the duty of every carrier to furnish cars. By virtue of these requirements it becomes the carrier's duty to maintain a reasonably adequate car supply, and the question of what is a reasonably adequate car supply is just as much an administrative one as the question of what is a reasonable

rate. The legal sufficiency of defendant's car supply can not be definitely fixed by the statute. It is a question which, using the language of the court in the **Mitchell case**, "involves a consideration and comparison of many and various facts and calls for the exercise of the discretion of" this tribunal.'

"One further argument advanced by defendant should be considered in connection with the question of jurisdiction. Defendant states that to require the carrier to purchase additional equipment may involve a demand that the carrier increase its capital account, and the power of the Commission can only properly be determined by a consideration of its right to require such action on the part of the railroads. But such an objection is not sound, because the question of the financial ability of any carrier would be a matter for consideration in judging of the reasonableness of the request for special or additional equipment and would be one of the matters considered by the Commission in judging the particular case when the same arises."

Pennsylvania Paraffine Works vs. Pennsylvania R. R. Co., 34 I. C. C. Rep. 179, 184.

The Supreme Court has since held that the Commission has no power to direct carriers to acquire equipment.

Compare:

Car Supply Investigation, 42 I. C. C. Rep. 657.

It is clear, therefore, in summing up the powers of the Commission that it is an administrative agency created by Congress to execute the Act to Regulate Commerce passed in pursuance to public policy, and its powers and functions are only those conferred by Congress.

Application S. P. C. in re Operation S. S. Co., 32 I. C. C. Rep. 690, 698.  
Five Per Cent Case, 32 I. C. C. Rep. 325, 329.

The Interstate Commerce Commission has jurisdiction over transportation "by rail and water through the Panama Canal."

Amendment of 1912 to Act to Regulate Commerce.

See also:

Transcontinental Commodity Rates, 32 I. C. C. Rep. 449, 456.

See also:

- The Ogden Gateway Case, 35 I. C. C. Rep. 131, 140.  
 Seymour vs. M. L. & T. Ry. Co., 35 I. C. C. Rep. 492.  
 1915 Western Rate Advance Case, 35 I. C. C. Rep. 497, 562.  
 Streever Lumber Co. vs. C. M. & St. P. Ry. Co., 34 I. C. C. Rep. 1.  
 McArthur Bros. Co. vs. E. P. & S. W. Co., 34 I. C. C. Rep. 30.  
 Second Industrial Railways Case, 34 I. C. C. Rep. 596, 604.  
 A. T. & S. F. Ry. Co. vs. K. C. Stock Yards Co., 33 I. C. C. Rep. 92, 98, 102.  
 International Paper Co. vs. D. & H. Co., 33 I. C. C. Rep. 270, 274.  
 Talcott vs. S. P. Co., 33 I. C. C. Rep. 292, 293.  
 Northern Pine Mfrs. Assn. vs. C. & N. W. Ry. Co., 33 I. C. C. Rep. 360, 365.  
 Chattanooga Packet Co. vs. I. C. R. R. Co., 33 I. C. Rep. 384, 392.  
 White & Co. vs. W. U. Tel. Co., 33 I. C. C. Rep. 500, 502.  
 Doran & Co. vs. N. C. & St. L. Ry. Co., 33 I. C. C. Rep. 523, 526.  
 Jurisdiction Over Urban Electric Lines, 33 I. C. C. Rep. 536, 539.  
 Rates on High Explosives to G. T. Ry. Stations, 33 I. C. C. Rep. 567, 569.  
 Chicago, Ottawa & Peoria Ry. Co. vs. C. & N. W. Ry. Co., 33 I. C. C. Rep. 573, 575.  
 Lake Lines Applications under Panama Canal Act, 33 I. C. C. Rep. 699, 715.  
 Industrial Railways Case, 32 I. C. C. Rep. 129, 131.  
 Inman, Akers & Inman vs. A. C. L. R. R. Co., 32 I. C. C. Rep. 146, 148.  
 Ia. & S. W. Ry. Co. vs. C. B. & Q. R. R. Co., 32 I. C. C. Rep. 172, 174.  
 New York Produce Exchange vs. N. Y. C. & H. R. R. Co., 32 I. C. C. Rep. 212, 215.  
 Board of Trade of Kansas City vs. St. L. & S. F. R. R. Co., 32 I. C. C. Rep. 297, 311.  
 Transcontinental Commodity Rates, 32 I. C. C. Rep. 449, 456.  
 Atlas Portland Cement Co. vs. L. V. R. R. Co., 32 I. C. C. Rep. 487, 488.

- Car-Ferry Allowance at Cheboygan, Mich., 32 I. C. C. Rep. 578, 580.
- Illinois Coal Cases, 32 I. C. C. Rep. 659, 680.
- Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. Rep. 32, 70.
- Decatur Navigation Co. vs. L. & N. R. R. Co., 31 I. C. C. Rep. 281, 287.
- Switching at Galesburg, 31 I. C. C. Rep. 294, 296, 297.
- Bowling Green Protective Ass'n. vs. E. & B. G. Packet Co., 31 I. C. C. Rep. 301, 306.
- Five Per Cent Case, 31 I. C. C. Rep. 351, 426.
- Pacific Nav. Co. vs. S. P. Co., 31 I. C. C. Rep. 472, 476, 477, 478.
- Corp. Comm. of Oklahoma vs. A. T. & S. F. Ry. Co., 31 I. C. C. Rep. 532, 541.
- New Orleans Live Stock Exchange vs. L. & N. R. R. Co., 31 I. C. C. Rep. 609, 612.
- Wichita Business Ass'n. vs. A. T. & S. F. Ry. Co., 30 I. C. C. Rep. 45, 55.
- Pacific Coast Gypsum Co. vs. O. W. R. R. & N. Co., 30 I. C. C. Rep. 135, 139.
- Proposed Bond Issue by N. Y. C. & H. R. R. Co., 30 I. C. C. Rep. 147, 152.
- Coal Rates from Oak Hills, Colo., 30 I. C. C. Rep. 505, 508.
- Milwaukee Produce & Fruit Exchange vs. Crosby Transportation Co., 30 I. C. C. Rep. 653, 655.
- Trier vs. St. P. M. & O. Ry. Co., 30 I. C. C. Rep. 707, 709.
- Lumber Rates from the Southwest to points North, 29 I. C. C. Rep. 1, 16.
- Richmond-Eureka Mining Co. vs. Eureka Nevada Ry. Co., 29 I. C. C. Rep. 62, 64.
- Fabrication-in-transit Charges, 29 I. C. C. Rep. 70, 78.
- Eastman, Gardiner & Co. vs. I. C. R. R. Co., 29 I. C. C. Rep. 94, 97, 98.
- Wichita Board of Trade vs. A. & S. Ry. Co., 29 I. C. C. Rep. 376.
- In re Bills of Lading, 29 I. C. C. Rep. 417.
- St. Paul & Puget Sound Accounts, 29 I. C. C. Rep. 508, 517.
- Lumber Rates from Oregon and Washington, 29 I. C. C. Rep. 609, 618.
- Central Commercial Co. vs. L. & N. R. R. Co., 27 I. C. C. Rep. 114, 115.
- Reconsignment and Storage of Lumber and Shingles, 27 I. C. C. Rep. 451, 455.
- Sioux City Terminal Elevator Co. vs. C. M. & St. P. Ry. Co., 27 I. C. C. Rep. 457, 463.
- New England Investigation, 27 I. C. C. Rep. 560, 614.
- Blakely Southern R. R. Co. vs. A. C. L. R. R. Co., 26 I. C. C. Rep. 344, 349.
- R. R. Comm. of Montana vs. N. P. Ry. Co., 26 I. C. C. Rep. 407, 409.
- Robinson Land & Lumber Co. vs. M. & O. R. R. Co., 26 I. C. C. Rep. 427, 429.
- Griffing vs. C. & N. W. Ry. Co., 25 I. C. C. Rep. 134, 135.



- National Wool Growers' Ass'n. vs. O. S. L. R. R. Co., 25 I. C. C. Rep. 675, 677.
- In re Pipe Lines, 24 I. C. C. Rep. 1, 3.
- Chamber of Commerce of New York vs. N. Y. C. & H. R. R. Co., 24 I. C. C. Rep. 55, 74.
- Boileau vs. P. & L. E. R. R. Co., 24 I. C. C. Rep. 129, 132.
- Iowa vs. A. C. L. R. R. Co., 24 I. C. C. Rep. 134, 135.
- Flour City S. S. Co. vs. L. V. R. R. Co., 24 I. C. C. Rep. 705.
- In re Express Rates, 24 I. C. C. Rep. 380, 430.
- Transit Case, 24 I. C. C. Rep. 340, 343.
- Larkin Co. vs. E. & W. T. Co., 24 I. C. C. Rep. 645, 647.
- Cosby vs. Richmond Transfer Co., 23 I. C. C. Rep. 72, 77.
- Mattison vs. Pennsylvania Co., 23 I. C. C. Rep. 233, 234.
- Mobile Chamber of Commerce vs. M. & O. R. R. Co., 23 I. C. C. Rep. 417, 421.
- In re Wharfage Charges at Galveston, 23 I. C. C. Rep. 535, 544.
- Albree vs. B. & M. R. R. Co., 22 I. C. C. Rep. 303, 319.
- In re Advances Coal to Lake Ports, 22 I. C. C. Rep. 604, 612, 613.
- Boileau vs. P. & L. E. R. R. Co., 22 I. C. C. Rep. 640, 654.
- Sterling & Son vs. M. C. R. R. Co., 21 I. C. C. Rep. 451, 454.
- Lum vs. G. N. Ry. Co., 21 I. C. C. Rep. 558, 561.
- City of Spokane vs. N. P. Ry. Co., 21 I. C. C. Rep. 400, 412.
- In re Advance of Rates—Western Case, 20 I. C. C. Rep. 307, 317.
- Southwestern Produce Distributers vs. W. R. R. Co., 20 I. C. C. Rep. 458, 461.
- In re Jurisdiction in Alaska, 19 I. C. C. Rep. 81, 93. (See U. S. Sup. Ct. decision under "The Interstate Commerce Law," Part I, Chap. VI, "Amplification of Section 1," Sec. ——— "Jurisdiction Over Carriers in Alaska.")
- Gund & Co. vs. C. B. & Q. R. R. Co., 18 I. C. C. Rep. 364, 366.
- Joynes vs. Pennsylvania R. R. Co., 17 I. C. C. Rep. 361, 369.
- Smook vs. C. R. R. of N. J., 17 I. C. C. Rep. 375, 376.
- Parter vs. S. L. & S. F. R. R. Co., 15 I. C. C. Rep. 53, 55.
- Nebraska-Iowa Grain Co. vs. U. P. R. R. Co., 15 I. C. C. Rep. 90, 94.
- Woodward & Dickerson vs. L. & N. R. R. Co., 15 I. C. C. Rep. 170, 172.
- Black Mountain Coal Land Co. vs. S. Ry. Co., 15 I. C. C. Rep. 286, 295.
- Morse Produce Co. vs. C. M. & St. P. Ry. Co., 15 I. C. C. Rep. 334, 337.
- Bulte Milling Co. vs. C. & A. R. R. Co., 15 I. C. C. Rep. 351, 364.
- Eichenberg vs. S. P. Co., 14 I. C. C. Rep. 250, 266.
- National Petroleum Assn. vs. Ann Arbor R. R. Co., 14 I. C. C. Rep. 272, 281.

See also:

- Mitchell Coal Co. vs. P. R. R. Co., 230 U. S. 247.
- I. C. C. vs. L. & N. R. R. Co., 227 U. S. 88.
- S. P. Co. vs. I. C. C., 219 U. S. 433, 450.



U. S. vs. Union Stock Yards & T. Co., 226 U. S. 286  
L. & N. R. R. Co. vs. Cook Brewing Co., 223 U. S. 70.  
I. C. C. vs. U. P. R. R. Co., 222 U. S. 541.  
I. C. C. vs. C. R. I. & P. Ry. Co., 218 U. S. 88.  
I. C. C. vs. C. B. & Q. R. R. Co., 218 U. S. 113.  
Harriman vs. I. C. C. 211 U. S. 407.  
S. P. Co. vs. I. C. C. 219, U. S. 433, 450.  
L. V. R. R. Co. vs. Clark, 207 Fed. Rep. 717, 721.  
American Sugar Refining Co. vs. D. L. & W. R. R. Co., 207  
Fed. Rep. 733, 737.  
L. V. R. R. Co. vs. U. S. 204 Fed. Rep. 986, 990, 991, 993, 995.  
Jacoby vs. Penn. R. R. Co., 200 Fed. Rep. 987, 996.  
American Sugar Refining Co. vs. D. L. & W. Ry. Co., 200  
Fed. Rep. 652, 654, 655.  
S. P. Co. vs. Pennsylvania R. R. Co., 186 Fed. Rep. 237, 239.  
Mitchell Coal & Coke Co. vs. Pennsylvania R. R. Co., 183  
Fed. Rep. 908, 909.  
Banaka vs. Mo. Packg. Co., 186 S. W. Rep. 7.

#### § 4. Genesis of the Commission.

The Act to Regulate Commerce as approved February 4, 1887, and as in effect today, provides for the creation and establishment of a commission "to be known as the Interstate Commerce Commission." It is easily apparent that the name "Interstate Commerce Commission" is in part a misnomer, since the Act gives the Commission no jurisdiction over the articles of commerce but simply over the means of carrying on interstate commerce. But the statute has given the Commission its name, and it cannot properly be known by any other.

As originally created, the Interstate Commerce Commission consisted of five commissioners, appointed for terms of six years. President Cleveland appointed Thomas M. Cooley, of Michigan, as chairman, and William R. Morrison, of Illinois, August Shoonmaker, of New York, Aldace F. Walker, of Vermont, and Walter F. Bragg, of Alabama, to constitute the first commission, which organized on March 31, 1887, and entered upon the discharge of its duties. While the Commission itself was organized as of March 31, 1887, the terms of office of the commissioners began as of January 1, 1887. The provisions of the Act,

other than those creating the Commission, did not take effect until April 5, 1887.

### **§ 5. Members of Present Commission.**

The amendatory section 24, added to the Act to Regulate Commerce, June 29, 1906, increased the number of commissioners constituting the Interstate Commerce Commission from five to seven. This section was again amended on August 6, 1917, increasing the membership of the Commission to nine, and empowering the Commission to divide itself into divisions.

The members of the Commission in 1917 and prior to the new appointments under the 1917 amendment were: Henry C. Hall, Chairman; Balthasar H. Meyer, Edgar E. Clark, James S. Harlan, Charles C. McChord, Winthrop M. Daniels, Commissioners. Judson C. Clements died in July, 1917.

### **§ 6. Qualifications of Commissioners.**

Section 11 of the Act to Regulate Commerce, as approved February 4, 1887, and in effect at this time, provides that "no person in the employ of or holding any official relation to any common carrier subject to the provisions of this Act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment."

### **§ 7. Appointments of Commissioners.**

The Commissioners are appointed by the President, by and with the advice and consent of the Senate. Not more than four Commissioners may be appointed from the same political party.

Act to Regulate Commerce, sections 11 and 24.

**§ 8. Terms of Office.**

The Act originally provided that the terms of office of the Commissioners should be six years, but by the amendment of June 29, 1910, added section 24 changed the terms to be of seven years' duration.

**§ 9. Salaries of Commissioners.**

The salaries of the Commissioners in the original Act were fixed at seven thousand five hundred dollars per annum each, but by the amendment of June 29, 1906, the salaries were increased to ten thousand dollars per annum for each Commissioner.

Act to Regulate Commerce, section 24.

The salaries of the Commissioners are payable in the same manner as the salaries of the Judges of the United States Courts.

**§ 10. Vacancies—How Filled.**

The Act provides that any person appointed to fill a vacancy in the Commission shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

Act to Regulate Commerce, section 24.

**§ 11. Removal of Commissioner from Office.**

Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

Act to Regulate Commerce, section 24.

**§ 12. Duties of Commissioners.**

The Commissioners exercise a general executive control and management over all business and operations of the Commission. The work of the Commission is divided up into departments or divisions over which the Commissioners exercise a supervisory direction and control. The internal arrangement of the Commission will be found under the head, "Operating Divisions of the Commission," in a post section.

The Commissioners examine all complaints filed with the Commission, conduct trials or hearings of controversies within the purview of the Act, make investigations, prepare and render reports, decisions and orders, and such circulars as may be issued, direct the issuance of the necessary subpoena for the production of witnesses or documents, and carry on the correspondence of the Commission dealing with the multitude of subjects which are brought to the attention of the Commission by both the shippers and the carriers.

**§ 13. The Chairman of the Commission.**

The chairman of the Commission is chosen by the Commissioners from among its members, the chairmanship rotating annually to the oldest Commissioner in point of service.

The chairman of the Commission during 1917 was the Hon. Henry C. Hall, of Colorado. Certain special executive duties fall to the chairman, such as the signing of expense vouchers, assignments of cases or subjects of investigation among the Commissioners, etc.

**§ 14. The Secretary of the Commission.**

The Commission is authorized by the Act to appoint a secretary, at an annual compensation of \$5,000.00, to serve

at the pleasure of the Commission. The salary of the secretary as provided for in the original Act was \$3,500.00 per annum, but this was increased to \$5,000.00 a year in 1907.

Sundry Civil Act, March 4, 1907. 34 Stat. L., 1311.

### **§ 15. Duties of the Secretary of the Commission.**

The secretary of the Commission is required by the Act to preserve and be responsible for as public records, all copies of schedules, classifications, tariffs of rates, fares, and charges, contracts, agreements, and arrangements between carriers filed with the Commission, and all statistics, tables, and figures contained in the annual or other reports of carriers made to the Commission, and all copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, or reports, are certified under the seal of the Commission by the secretary when used as evidence as provided in the Act.

Act to Regulate Commerce, section 16.

The secretary is the executive and disbursing officer of the Commission, and is under bond. In addition to the duties required of the secretary by the Act, the Commission charges the secretary with many duties relating to its records, documents, and publications, correspondence, mail, service of papers, distribution of documents and publications, supervision of employees, disbursements and payment of employees, and any other duties and services the Commission may deem fit and proper he should perform.

### **§ 16. Past and Present Secretaries.**

Edward A. Moseley was appointed the first secretary of the Commission, and served in that capacity until his death in 1911. He was succeeded by John H. Marble.

George B. McGinty, the Commission's present secretary, succeeded Mr. Marble upon the latter's death.

**§ 17. Seal of the Commission.**

Section 17 of the Act provides that the Commission shall have an official seal, which shall be judicially recognized.

**§ 18. Special Attorneys for Commission, Reorganization of Legal Staff.**

The division of law, as at present organized, represents the Commission in injunction and other proceedings brought by carriers in the federal courts against orders of the Commission, and in such civil actions, as the Commission approves, to enforce statutory forfeitures incurred by failure to comply with its orders.

It coordinates and supervises the work of the valuation attorneys in the several districts; participates, when so directed, in special investigations instituted by the Commission of its own motion or at the request of Congress; and prepares such briefs and memoranda on questions of law as may be required of it in the general work of the Commission.

I. C. C. Ann. Rep., 1915.

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for and represent the Commission in any case pending in the courts; and the expenses of such employment is paid out of the appropriation for the Commission.

Act to Regulate Commerce, section 17.

This was a most important authority conferred upon the Commission by the amendment of 1906, and resulted from



the experience of the Commission in assigning counsel from its own Law Division to assist complaining parties in proceedings before the Commission. This practice of rendering legal assistance to parties complainant before the Commission, when some private shipper has sought relief before it and met with learned and experienced advocates whom the carriers have put forward in their controversies with their patron, not only reflects the wisdom and foresight of the Commission, but its conscientious purpose to administer the law fully and equally among all.

In the seventeenth annual report of the Commission, the Commission gives expression to its reasons for rendering this most valuable aid to those who seek its protection, thus:

“The Act to Regulate Commerce was enacted for the purpose of correcting unreasonable rates and discriminating practices in the interstate transportation of freight and passengers by rail. In the very nature of things the wrongs aimed at are of trifling consequences to the individual, while of tremendous importance to the public as a whole. If a rate be extortionate the amount paid by a single shipper is usually small, but the total may amount to millions of dollars annually. Perhaps in most instances the freight is so small a part of the total cost of a commodity that the consumer is unconscious of the increase in rate. The middleman who pays the freight is not immediately interested in the absolute amount of that rate, provided he enjoys as favorable terms as his competitors. It results, therefore, that no one individual can ordinarily afford to sustain the burden of litigating the reasonableness of a freight rate; and this is equally true, in most instances, of discrimination between commodities or localities. To create merely a right of action in such instances and to establish a court to which the aggrieved parties may apply would afford no substantial



relief. The business of transportation by rail has been often designated as a quasi-public function. In many countries the public itself discharges that duty. In our country it has been left to private enterprises. If the public delegates to others this duty, it should at least provide some means whereby the reasonableness of the charges imposed and the fairness of the practices involved may be determined at the public expense.

"In our view of the matter this was the leading notion in enacting the Interstate Commerce Law and creating this Commission. The Commission is not a court. It is a Commission in the nature of an administrative body, invested with certain specified powers by the Act which created it. In the exercise of those powers it is required at times to hear and pass upon complaints of individual shippers against interstate carriers. This, however, is but a small part of its duties, as an examination of the Act itself conclusively shows. This in terms declares that 'the Commission is hereby authorized and required to execute and enforce the provisions of this Act,' and the fullest power of inquiry into the methods and practices of interstate carriers is accorded. The 13th section, after stating who may make complaint, how such complaint shall be served upon the carrier, in what manner the complaint may be satisfied by the carrier, continues:

'If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.'

"In *Interstate Commerce Commission vs. Brimson*, the Supreme Court of the United States examined at great length the scope and purposes of this Act, saying, among other things:

'All must recognize the fact that the full information necessary as a basis of intelligent legislation by

Congress from time to time upon the subject of interstate commerce can not be obtained, nor can the rules established for the regulation of such commerce be efficiently enforced otherwise than through the instrumentality of an administrative body, representing the whole country, always watchful of the general interest, and charged with the duty of not only obtaining the required information, but by compelling by all lawful methods obedience to such rules.'

I. C. C. vs. Brimson, 154 U. S. 447.

"In this view of the law we cannot, when a complaint involving a question of general public interest is brought to our attention, merely say to the complainant: 'Employ your attorney, file your complaint, produce your proofs, state your claim, and we will decide the issue.' Shippers could not and will not be put to the expense of prosecuting complaints before the Commission ordinarily under those conditions, as appear both from the nature of the case and from the experience of the Commission; nor in our view, should they be required to do so. The investigation is for the public benefit and should be conducted at the public expense. Whenever complaint is made which involves a question of general application, either as to the unreasonableness of a rate or the existence of some discriminating practice, we deem it our duty to investigate that matter without expense to the complainant. This investigation may be prosecuted in two ways. The Commission may begin a proceeding upon its own motion, or it may, in the language of the thirteenth section, 'investigate the matters complained of in such manner and by such means as it shall deem proper.' It often happens that the most inexpensive, more effective, and the most expeditious method is to proceed in the pending case by appointing some one to appear at the expense of the Government in the public interest. \* \* \*

"If our decision concerned the complainant alone it might with great propriety be said that he should take the consequences of his own laches; but where the decision is to become a precedent in numberless other instances, where its effect upon the complainant is utterly insignificant in comparison with the effect upon the general public, it will be seen that the rule cannot properly be enforced. Broadly speaking, it may be said that whenever this Commission has notice by formal complaint, or otherwise, of an apparent infraction of the Act to Regulate Commerce which ought in its opinion to be examined, and in the nature of things will not be or can not be without the assistance of the Government, we deem it our duty to proceed with as full an investigation of the matter as the time and means at our disposal will permit."

It is of the utmost importance to the general shipping public to thoroughly understand this aid which the Commission affords to the shipper in the bringing to its attention for correction of those abuses and practices which in their pecuniary effect upon the individual are trifling but are of great import and far reaching effect upon the shipping public as a whole.

#### **§ 19. Special Examiners and Agents of the Commission.**

Section 20 of the Act to Regulate Commerce, as amended, confers authority upon the Commission to employ special agents or examiners, who shall have authority, under the order of the Commission, to inspect and examine any and all accounts, records, and memoranda kept by the carriers subject to the Act, and this provision shall apply to receivers of carriers and operating trustees.

This same section of the Act provides further, that in order to carry out and give effect to the provisions of the Acts, or any of them, the Commission is authorized

to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

Under this authority, the Commission has appointed a chief examiner and several assistant examiners, each empowered to administer oaths, examine witnesses and receive evidence, and report the same to the Commission. One of the assistant examiners is assigned to each Commissioner.

The principal duties of the chief examiner are to authorize service upon formal complaints and to assign cases for hearing and report to the assistant examiners. These examiners travel about the country holding their examinations and hearings at places and times best adapted to public convenience and economy. In this manner, by the disposal of many minor cases and prompt procurement of evidence and technical data, the work of the Commission is materially facilitated in the matter of investigations and hearings.

The Act provides a penalty for any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof. Upon conviction thereof, in any court of the United States of competent jurisdiction, such examiner is subject to a fine of not more than five thousand dollars or imprisonment for a term not to exceed two years, or both.

Act to Regulate Commerce, section 20.

Accountants are appointed as special examiners to examine accounts and records of carriers. (See Division of Valuation.)

There is also a board of examiner-attorneys acting in the same capacity as that of a master in chancery to the court, who hear and report the evidence in the more important cases, and in the last two years the Commission has increased in strength and number its general examining corps.

I. C. C. Ann. Reps. 1914 and 1915.

### § 20. Employees of the Commission.

By section 18 of the Act, the Commission is empowered to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties.

The present organization of the Commission includes over 500 such employees acting as accountants, confidential clerks, examiners, inspectors, law clerks, rate clerks, statisticians, stenographers, messengers, etc., all of whom are appointed by the Commission under civil service rules. The more important of these employees are selected with much care as to their past experience and environment in fitting them for the particular service of the Commission.

I. C. C. Ann. Rep. 1916.

### § 21. Office of the Commission.

Section 19 of the Act provides that the principal office of the Commission shall be in the city of Washington, where its general session shall be held, and section 18 of the Act authorizes the Commission to hire suitable offices for its use. The principal offices of the Commission are in the Interstate Commerce Commission Building, 18th St. and Pennsylvania Ave., Washington, D. C., where it holds its general sessions.

## § 22. Address of the Commission.

The general address of the Commission is Washington, D. C., unless otherwise specified.

Tariffs sent for filing must be addressed "Interstate Commerce Commission, Division of Tariffs, Washington, D. C."

I. C. C. Tariff Circular 18-A, Supp. No. 3, Amendment to Rules 14-(1) and 41-(r), adopted February 5, 1912.

Rule 21 of the Rules of Practice before the Commission requires that all complaints concerning anything done or omitted to be done by any common carrier, and all petitions or answers in any proceeding or applications in relation thereto, and all letters and telegrams for the Commission, must be addressed to Washington, D. C., unless otherwise specially directed.

## § 23. Expenses of the Commission.

Section 18 of the Act provides that all of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation or upon official business in any other place than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

Amounts expended under the appropriations for the fiscal year ended June 30, 1916:

As salaries to Commissioners and secretary.....	\$75,000.00
All other authorized expenditures.....	1,023,257.81
Examination of accounts, Act approved June 29, 1906	299,748.61
Locomotive boiler inspection, Act approved Feb. 17, 1911 .....	211,520.08
Safety appliance, block signal, and hours of service.	240,239.14
Valuation .....	2,984,332.83
	<hr/>
	\$4,834,098.47



### § 24. General and Special Sessions of the Commission.

The Act provides for both general and special sessions of the Commission, its general sessions to be held at the principal offices of the Commission in the city of Washington, but that when the convenience of the public or the parties may be promoted, or delay or expenses prevented thereby, the Commission may hold special sessions in any part of the United States by the Commissioners collectively, by an individual Commissioner, or by specially appointed examiners.

Act to Regulate Commerce (Amd. 1910), section 19.

Rule 1 of Rules of Practice before the Commission provides for general and special sessions in accordance with the provisions of the Act, and sets apart the two weeks beginning with the first Monday in each month for its general sessions at Washington, D. C. The first and second Mondays in each month are set apart for general conferences.

### § 25. Dockets of the Commission.

The Commission keeps an official docket of the formal, informal, and special matters, submitted to it, and also of the "General Investigations" provided for in section 12 of the Act. These latter cases are *ex parte* and are so docketed, as "In Re" or "In the Matter of." There are in reality three dockets—the general docket, the informal docket and the special docket. Upon both dockets the formal and informal cases take serial numbers in the order of their filing. The form and entries in the docket are of the same general nature as those in a court docket, except that there is no entry for costs or fees in the dockets of the Commission.



Classification by causes and commodities of amounts adjusted for loss and damage to freight by steam railway carriers having annual revenues exceeding \$1,000,000, period Jan. 1, 1914, to Dec. 31, 1915

Commodities.	Causes.																			Ratio of amount paid on each commodity to total payments of all commodities.
	Robbery.		Concealed loss.	Unlocated loss.		Fire.	Wrecks.	Concealed damage.	Defective equipment.	Errors of employees.	Rough handling of cars.	Improper refrigeration and ventilation.	Improper handling, loading, or stowing and improper packing and packaging of freight.	Delays.	Unlocated damage.	Perfeitures under penalty statutes.	Amount recovered from sale of refused and unclaimed freight—Credit.	Total.		
	Of entire package.	Other.		Of entire package.	Other.															
	A.	B.		C.	D.														E.	
1. Boots and shoes.....	\$98,509.75	\$205,109.88	\$128,219.09	\$252,633.81	\$109,810.09	\$35,274.77	\$22,594.71	\$7,945.55	\$4,721.39	\$24,867.08	\$7,101.12		\$7,660.00	\$10,991.76	\$22,021.37	\$59.35	\$25,168.09	\$912,420.63	Percent.	
2. Clothing, dry goods, and notions.....	187,823.80	478,736.61	355,792.81	490,561.74	193,628.10	58,729.14	68,357.50	79,045.24	30,150.31	74,323.02	43,407.42		48,149.31	49,605.25	107,317.33	211.44	71,802.99	2,194,096.03	6.777	
3. Butter and cheese.....	15,135.96	9,754.34	2,307.69	120,130.44	16,902.92	3,315.66	12,088.90	2,101.22	6,329.04	9,768.64	27,738.46	\$10,610.72	14,242.72	29,574.12	50,124.06		36,548.12	323,561.87	.999	
4. Eggs.....	5,244.27	2,033.37	1,958.44	66,596.08	10,783.23	1,944.19	21,685.15	20,271.62	17,754.31	10,643.18	211,901.90	38,837.39	31,297.69	20,480.43	327,177.26	4.31	102,565.55	686,347.27	2.120	
5. Fresh fruits and vegetables.....	12,325.46	32,187.19	5,510.00	181,839.77	69,301.84	13,869.93	136,378.31	8,732.75	54,669.78	130,521.54	396,446.83	656,531.35	81,221.60	516,722.11	498,501.59	1,210.22	114,029.93	2,687,393.36	8.300	
6. Live stock.....	1,168.74	652.48	178.46	31,981.35	29,261.08	35,120.81	194,727.68	2,432.67	42,178.69	79,334.77	431,612.43	368.39	48,490.20	867,713.38	473,277.34	75.08	26,923.63	2,211,635.92	6.831	
7. Meats and packing-house products.....	27,312.61	32,460.23	8,560.08	219,945.25	44,325.44	3,825.91	187,825.60	3,570.56	17,180.13	32,276.88	40,397.55	178,275.45	27,591.56	149,903.57	89,032.72	350.56	31,291.82	1,031,633.61	3.186	
8. Poultry, game, and fish.....	4,170.13	7,208.60	1,580.87	27,316.13	10,432.32	269.35	18,869.89	1,989.78	3,811.45	15,306.83	19,269.28	41,595.35	5,717.01	62,885.76	40,950.29	5.90	12,901.96	248,446.98	.767	
9. Grain.....	3,769.79	21,826.10	9,250.15	73,554.41	631,128.58	25,576.52	217,637.72	6,319.65	1,560,213.94	41,800.72	35,777.74	668.62	24,419.34	139,023.68	72,176.14	573.93	148,650.45	2,718,077.58	8.395	
10. Flour and other mill products.....	8,158.56	3,550.26	5,158.85	128,614.62	32,935.53	13,986.58	43,241.86	5,123.34	685,366.39	30,026.40	165,692.98		57,736.12	18,491.28	362,016.25	694.41	125,405.39	1,394,576.04	4.308	
11. Sugar.....	5,060.52	4,040.53	1,566.14	94,051.42	42,431.52	10,458.18	13,190.47	2,406.92	160,143.35	8,000.69	48,962.84		31,019.57	12,471.91	95,703.06	143.66	125,459.96	405,559.88	1.253	
12. Groceries.....	27,265.66	64,780.40	14,737.52	422,388.58	160,135.38	21,022.61	53,023.90	16,512.98	78,925.60	32,792.19	182,178.48	13,759.08	81,885.23	21,024.22	312,410.30	622.76	68,792.21	1,454,687.68	4.431	
13. Wines, liquors, and beers.....	48,024.38	84,275.71	11,991.73	211,854.55	96,650.20	8,664.96	24,490.86	10,331.87	3,906.01	14,751.13	72,128.00	17,913.50	24,449.51	7,845.44	111,174.28	249.16	8,774.54	740,832.78	2.283	
14. Tobacco and tobacco products.....	58,196.58	81,340.79	15,179.27	269,661.68	61,277.29	4,336.90	31,950.53	13,041.45	17,997.53	17,452.11	11,514.60		10,761.66	9,918.64	32,983.37	187.73	27,264.99	615,538.23	1.885	
15. Cotton.....	3,126.65	1,667.44	530.48	169,023.73	19,991.55	176,878.09	5,264.55	680.10	7,473.21	43,613.17	2,864.72		9,329.73	15,992.25	29,776.22	273.95	73,180.79	404,211.05	1.249	
16. Furniture (new).....	4,607.37	2,635.29	6,061.76	167,307.88	18,677.42	23,447.44	79,185.35	185,635.89	22,569.08	17,326.68	406,237.40		137,660.08	5,427.09	642,097.40	478.25	36,819.06	1,626,330.70	5.025	
17. Household goods.....	5,579.22	11,377.24	5,748.81	106,085.06	17,361.56	15,435.44	23,844.80	71,766.52	11,647.39	16,034.14	257,178.43		68,932.14	5,601.75	406,164.16	830.09	12,040.99	1,011,605.76	3.125	
18. Products of cement, clay, and stone.....	1,501.14	1,607.25	3,071.83	35,683.29	12,282.31	5,065.61	29,299.39	46,343.88	60,078.96	11,428.73	343,984.59		41,451.09	6,065.52	317,460.59	140.20	12,232.72	903,881.95	2.792	
19. Glass and glassware.....	1,542.21	3,092.56	4,028.01	46,737.19	7,796.80	3,093.64	25,203.57	111,262.03	6,118.49	168,945.47			64,199.12	5,865.37	251,500.59	24.70	4,555.49	698,614.60	2.161	
20. Stoves.....	785.03	1,413.04	1,250.68	51,261.39	7,513.49	2,844.47	8,935.27	21,882.15	8,649.77	4,482.11	141,463.19		39,207.65	2,171.63	234,562.31	47.44	9,666.88	516,895.74	1.597	
21. Iron and steel castings and bars.....	5,792.13	4,969.13	4,135.02	184,723.05	33,543.89	12,888.45	40,160.19	13,643.56	47,654.12	20,305.55	111,127.09		40,724.61	8,926.24	175,614.00	333.87	28,037.58	676,496.42	2.089	
22. Vehicles.....	8,794.99	25,470.17	2,687.43	43,128.39	13,628.51	23,683.19	85,968.55	11,502.74	5,529.02	16,756.95	99,182.78		28,244.99	2,682.14	139,921.47		15,912.39	492,377.48	1.521	
23. Agricultural implements.....	1,299.70	4,736.81	1,754.92	54,135.92	15,612.17	6,700.37	29,111.86	3,575.29	1,803.06	3,869.81	40,876.40		14,305.11	2,427.57	81,616.52	76.00	5,328.99	256,235.55	.791	
24. All other commodities.....	122,174.75	198,816.22	97,559.67	1,713,036.28	813,758.35	284,091.14	780,417.61	268,400.34	651,895.38	357,630.05	1,137,488.76	47,215.65	404,947.91	215,531.06	1,593,125.45	5,968.11	838,867.69	8,185,122.44	25.254	
Grand total.....	659,159.52	1,284,259.67	688,859.71	5,156,318.94	2,322,271.57	780,239.46	2,066,672.25	911,613.10	3,906,516.96	1,010,136.10	4,313,481.76	1,035,885.80	1,318,061.95	2,187,345.17	6,767,634.95	12,964.12	1,955,157.17	32,375,647.55	100	
Ratio of amount paid account of each cause to total payments, per cent.....	2.030	3.906	2.128	15.926	7.790	2.441	6.476	2.825	10.830	3.148	13.415	3.199	4.157	6.750	20.903	0.040	6.039	100		

Number of carriers reporting.....	180	Ratio of amount paid to total operating revenues.....	per cent.....	1.117
Number of miles operated by carriers reporting.....	227,884	Ratio of amount paid to total operating expenses.....	do.....	1.551
Amount paid per mile of road operated.....	\$142.07	Ratio of amount paid to freight revenues.....	do.....	1.625

The docket entries include the names of the parties complainant and defendant, dates of filing of the complaint, answer or other pleadings, hearings, arguments, briefs, and the report or opinion and order of the Commission.

Since the power to suspend rates has been rested in the Commission, a docket has been added known as the "Investigation and Suspension Docket."

(1) **The Formal Docket.** The number of formal complaints filed during the year ended October 31, 1916, was 854, a decrease of 110, as compared with the preceding year. During the same period 671 cases were decided and 135 were dismissed by stipulation or otherwise, making a total of 806 cases disposed of, as compared with 1,107 during the preceding year.

During the same period the Commission conducted 1,485 hearings, in the course of which approximately 154,488 pages of testimony were taken, as compared with 1,543 hearings and 200,438 pages of testimony during the preceding year.

A mere recital of these figures scarcely gives an adequate idea of the volume of work disposed of and the enormous interests involved in the cases that come before the Commission.

The Act requires that a report containing the conclusions of the Commission shall be issued in each case.

(2) **Investigation and Suspension Docket.** The number of proceedings instituted under this docket during the year 1916 was 223, an increase of 24 as compared with the previous year, and 206 such proceedings were disposed of, a decrease of 4 as compared with the preceding year. In addition, many new schedules were added to pending investigations by supplementary orders of sus-

pension. During the same period the Commission declined to exercise its authority to suspend in 312 cases, a decrease of 56 as compared with the previous year.

I. C. C. Ann. Rep. 1916.

(3) **The Special Docket.** For the year ended October 31, 1916, there were filed by carriers 6,640 special docket applications for authority to refund amounts collected in accordance with published charges which were admitted by the carriers to be unreasonable. This shows a decrease of 50 over the period covered by the previous report of the Commission. Orders were entered in 4,370 cases, a decrease of 372 as compared with the previous report, and reparation was awarded in amounts aggregating \$432,493.39. There were in addition, dismissed, or otherwise disposed of without an order, 1,833 cases, a decrease of 619 in the number shown in the last preceding report of the Commission.

I. C. C. Ann. Rep. 1916.

## § 26. Quorum of the Commission.

A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest.

Act to Regulate Commerce, section 17.

## § 27. Practice of Commission in Hearing Local Rate Cases.

It is the general practice of the Commission to assign the hearing of cases involving local rates to one or more examiners to be had at some central point in the territory immediately affected by the rates involved.

The increase in the work now devolving upon the Commission is such that each Commissioner spends a large part of his time in Washington in hearing and conference work, only holding local hearings in the more important cases, and then sometimes assisted by an examiner.

#### **§ 28. Submission of Cases and Time Required by the Commission for Rendering Decision.**

While there is, to a certain degree, a similarity of procedure in hearings and proceedings on formal petitions before the Commission with that of the general courts, the machinery of the Commission does not admit of as many opportunities for delays as in the procedure of the courts, but the crowded condition of the Commission's docket within recent years, renders six months about the minimum time in which the decision of a case after its filing may be expected, which, in turn, means about six weeks after its submission.

A formal case is deemed submitted when the taking of evidence has been completed, and the oral arguments made or the briefs filed with the Commission, in accordance with its rules of practice.

#### **§ 29. Assignment of Cases for Hearing.**

When a formal case is at issue and ready for hearing, it is assigned by lot to some one of the Commissioners, and it, therefore, follows that the same Commissioner who handled the preliminary correspondence relating to the case, may not be the Commissioner to hear and decide it.





## CHAPTER II.

### THE INTERSTATE COMMERCE COMMISSION. DIVISIONS AND FUNCTIONS OF THE COMMISSION.

- § 1. Operating Divisions of the Commission.
- § 2. Division of Correspondence and Claims.
- § 3. Departments in Charge of Commission Dockets.
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## CHAPTER II.

### THE INTERSTATE COMMERCE COMMISSION. DIVISIONS AND FUNCTIONS OF THE COMMISSION.

#### § 1. Operating Divisions of the Commission.

The wide scope and variety of conditions confronting the operation of the Commission, render necessary the departmentizing of its machinery for carrying on its manifold labors. Several separate divisions have been created by the Commission which include: operating division, law division, claims division, division of prosecutions, safety appliance division, division of statistics and accounts, division of tariffs and transportation, division of valuation, and board of examiners.

The operating division performs the administrative and general managerial work of the Secretary of the Commission and is interrelated, in a supervisory way, with many of the other divisions or departments. It is the department of the Commission through which the secretary carries out the official orders of the Commission.

#### § 2. Division of Correspondence and Claims.

To the division of correspondence and claims is assigned the task of disposing of a large volume of business submitted to the Commission informally. Owing to the number, scope, and intricacy of the problems so presented, it has been deemed advisable in the interest of consistency and uniformity to centralize and standardize the handling of them. This division has been organized to accomplish that object. It is equipped to give consideration to inquiries of a general character, to informal complaints, and to claims submitted on the special docket.

Many of these matters call for an interpretation of the law, and result in informal rulings, some of which are promulgated in our bulletin of conference rulings.

During the year 1916 this division received and answered approximately 50,000 general inquiries. This does not, however, represent the total number of letters or inquiries received by the Commission during that period.

In its annual reports the Commission has indicated that it aims to assist in obviating the necessity of formal complaints when there is any probability of bringing about an amicable adjustment by correspondence. Thousands of complaints are satisfactorily adjusted by this expeditious and economical method. During the past year 4,939 informal complaints were received, a decrease of 1,561, as compared with the preceding year. However, these figures are somewhat misleading unless qualified. The decrease is due in part to the adoption of a somewhat different method of handling informal complaints. Much of the correspondence received by the Commission has the characteristics of informal complaints, but not all of it is so classified. It has been found that many complaints can be disposed of by simply pointing out to the complainant his rights and obligations under the law.

### **§ 3. Departments in Charge of Commission Dockets.**

The docketing of cases and matters before the Commission has been referred to at an earlier point. Besides the keeping of the official docket of the Commission, the docket branch of the operating division looks after the issuance of subpoenas, records the Commission's orders and the service thereof, prepares the opinions and orders for publication, and serves notices in the assignment of cases for hearing and argument.

**§ 4. Filing of Complaints with Commission.**

Before the recorded filing of a formal complaint is made, it is subjected to scrutiny as to its form and jurisdictional subject-matter. If not at fault in these respects, it is filed, and service by registered mail had upon the proper parties.

**§ 5. Notices to Satisfy Complaints.**

See "Practice and Procedure Before Interstate Commerce Commission."

**§ 6. Cases at Issue.**

See "Practice and Procedure Before Interstate Commerce Commission."

**§ 7. Hearings of Cases.**

See "Practice and Procedure Before Interstate Commerce Commission."

**§ 8. Briefing of Cases.**

See "Practice and Procedure Before the Interstate Commerce Commission."

**§ 9. Submission of Cases.**

See "Practice and Procedure Before Interstate Commerce Commission."

**§ 10. Decision of Cases.**

See "Practice and Procedure Before Interstate Commerce Commission."

**§ 11. Reports of Commission.**

The publication of the opinions, findings, decisions, and orders of the Commission in formal proceedings, thus far



are included in 37 volumes, but prior to volume 12, the decisions of the Commission were not published by the Government. Volumes 1 to 5, inclusive, were published by Strouse & Company, and volumes 6 to 11, inclusive, by the Lawyer's Co-operative Publishing Company of Rochester, N. Y. This latter company published a volume in 1896 of "Decisions on Interstate Commerce Rendered by the Federal and State Courts." This volume was numbered V. The designation for citation purposes of the present Government printed reports of decisions of the Commission is "Interstate Commerce Commission Reports," or "I. C. C. R." while the earlier reports were indicated as "Interstate Commerce Reports" or "Int. Com. Rep."

All reports of investigations made by the Commission are entered of record, and a copy thereof furnished to the party who may have complained, and to any common carrier that may have been complained of.

The Commission provides for the publication of its reports and decisions in such form and manner as it deems best adapted for public information and use, and such authorized publications are competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several states without any further proof or authentication thereof. The Commission also causes its annual reports to be printed for distribution.

## **§ 12. Department in Charge of Accident Reports.**

Carriers are required by federal statute to file with the Commission a monthly report, under oath, of all collisions, derailments, or other accidents resulting in injury to persons, equipment or roadbed, and stating the nature and causes, and circumstances connected with such accidents.

These reports are checked up and accurately tabulated by the accident report branch of the operating department, classified and published for public distribution quarterly.

Act of May 6, 1910, Pub. 165.  
Ann. Rep. I. C. C. 103 and 1904.

See also "Division of Safety," this Chapter, Section 13.

### § 13. Division of Safety.

The work of the department is directed to the detection of violations of the "Safety Appliance Acts" (3) through inspectors employed to examine and inspect the equipment of the carriers and the safety appliances affixed thereto. These inspectors are in charge of a chief inspector who assigns them to specified territories, from which such inspectors are required to make daily reports. These reports are carefully scrutinized, and where defects appear in the equipment and appliances, or any other violations of the Safety Appliance Acts are apparent, the carrier is immediately notified and directed to see to their prompt correction.

Information received by the Commission as to alleged violations of these safety acts, or of conditions of danger to public safety in the roadbed, equipment or management and operation of railroads subject to the Act, is referred to this department for investigation and report to the Commission.

Complete records are kept of the conditions obtaining on the railroads inspected at all times.

The correspondence of this division of inspection is conducted under the direct supervision of the Secretary of the Commission.

Act of Mar. 2, 1883, 27 Stat. L. 531; 2 Supp. R. S. 102.

Act of Apr. 1, 1896, 29 Stat. L. 85 R. S. 455.

Act of Mar. 2, 1893, Amd. Apr. 1, 1896, app. Mar. 2. 1893, 32 Stat. L. 943.

Act of June 28, 1902, 32 Stat. L. 444.

A detailed report of the work of the Division of Safety will be found in the annual reports of the Commission, including reports on investigation of accidents and safety devices.

#### § 14. Stenographic and Typewriting Department.

This department performs the stenographic and typewriting work of the Commission, with the exception of making verbatim reports of hearings and transcripts of the evidence and proceedings, which latter is contracted out to large and competent law reporting firms and shorthand experts. \$76,423.40 was expended by the Commission during the fiscal year ending June 30, 1915, for contracted stenographic and typewriting services.

#### § 15. Mail Division.

This force looks after the public mailing list containing the addresses of thousands of persons to whom the annual Reports and other documentary matter of the Commission are sent, including its decisions, opinions and orders.

#### § 16. Division of Law.

The division of law, as at present organized, represents the Commission in injunction and other proceedings brought by carriers in the federal courts against orders of the Commission, and in such civil actions as the Commission approves to enforce statutory forfeitures incurred by failure to comply with its orders.

It co-ordinates and supervises the work of the valuation attorneys in the several districts; participates, when so

directed, in special investigations instituted by the Commission of its own motion or at the request of Congress; and prepares such briefs and memoranda on questions of law as may be required of it in the general work of the Commission.

This division is in charge of the Solicitor of the Commission, who is also in charge of the general supervision of the regular legal force of the Commission and such special attorneys as are provided for in the Act. This department represents the Commission in proceedings in the federal courts, and in some instances, in proceedings before the Commission itself.

I. C. C. Ann. Rep. 1915.

Act to Regulate Commerce, section 16.

### § 17. Division of Carriers' Accounts.

This division is in charge of the application, examination and enforcement of the uniform accounting system of the carriers prescribed by the Interstate Commerce Commission, in pursuance of its authority provided for in section 20 of the Act to Regulate Commerce, the work of the division being conducted under a board of examiners appointed by the Commission.

This division is also inclusive of claims against carriers.

Section 20 of the Act authorizes the Commission to "employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers." Believing the intent and purpose of the Act to be most effectively served thereby, the Commission has constituted of its examiners a "board," under the direction of the Chief Examiner, which holds special and general examinations, for the purpose of determining the conformity of the carriers with the prescribed system

of accounting formulated by the Commission and the accuracy of net revenues or profit and loss compilations appearing in the required reports from the carriers.

Referring to the province of this board, the Commission said, in its Annual Report for 1909:

"It is the purpose of special examinations to gather specific information relative to particular questions; the general examinations, on the other hand, are in the nature of a comprehensive examination of the accounts of carriers. The purpose of general examination is to determine whether or not the accounting orders and general transportation rules and principles laid down by the Commission are in fact observed by the carriers, and to note any irregularities reported which may be made the occasion of prosecution. The ultimate purpose of the task assigned to the board of examiners is to create a condition in which improper practices will not take place because of the certainty of their discovery and exposure, and to provide a means by which the Commission can satisfy itself that such administrative rulings and transportation principles as it lays down are in fact observed by all carriers."

An important administrative change in this division was made in 1914. When organized, and for two years thereafter, the entire force of the division had its headquarters at Washington. On July 1, 1910, a branch office was opened at Chicago. Since that time, additional branch offices have been established at New York, Philadelphia, Pittsburgh, St. Paul, St. Louis, San Francisco and New Orleans. A force of resident examiners is attached to each branch office. The advantage expected to accrue from this change was increased efficiency through better acquaintance with local conditions at important railroad centers and in their vicinity. It was also expected that a

substantial saving in expenses would be effected. Each of these expectations has been realized.

The board of accounting examiners was established under authority of the Hepburn amendment, for the principal purpose of assisting the Commission in enforcing the observance of its accounting regulations through the inspection of carriers' accounts, but within recent years, however, there has been an increasing demand on the division's accountants to assist in the investigation of formal cases before the Commission, and the field force of the division has been largely employed in such investigations, resulting in the field examination of carriers' accounting practices being somewhat curtailed.

I. C. C. Ann. Rep. 1914.

A general revision of the accounting classifications for steam railways, electric railways, and express companies was made in 1913 and the work was completed and the revised classifications made effective July 1, 1914.

This general revision was in the direction of development rather than change in principle. Additional accounts were provided, instructions amplified, item lists extended, and the terminology simplified and made more descriptive. The grouping of accounts was also so changed as better to show their relations. In the classifications of operating expenses for steam railways, electric railways, and express companies, accounts were provided for depreciation upon several classes of fixed property as well as equipment. The carriers are required to report to the Commission the bases used by them in calculating depreciation. The revenues and expenses of certain auxiliary, or "outside" operations of steam railways, heretofore shown separately in income account, are now combined with those of the main opera-



tions to which they are incidental, although they are still chargeable to separate primary accounts. The increasing use of electricity as an auxiliary in the operation of steam railways, has been recognized by the addition of several new accounts.

A new feature of some importance was a change in the basis of division between property accounts and operating expense accounts of steam railways, in accounting of expenditures for the replacement of property retired from service. Therefore, except in the case of equipment, the amount chargeable to operating expenses was the "cost of replacing in kind." Through the operation of this rule, changes in prices of labor and material have been absorbed in operating expenses and have not affected the property accounts. Under the current rules the cost of retired property is deducted from property accounts, and the cost of the new added, the effect being that property accounts reflect the actual cost of the new property. By this change, the treatment of the larger units of fixed property is brought into harmony with that of equipment. Owing to practical difficulties, however, any increase in the cost of replacing without betterment the smaller units of property, such as ties and rails, is still reflected in operating expenses and does not affect property accounts.

The system of accounts for electric railways was completed by the addition of classifications of income, profit and loss, and balance-sheet accounts, and that of express companies, by the addition of income and profit and loss accounts. A system of accounts for small telephone companies was prepared and became effective January 1, 1915. The task of revising and completing the system of accounts for pipe-line companies has also been completed.

The bulletin of accounting decisions under the former classifications for steam railways has been revised to con-

form to the new classifications and issued with additional cases. A similar revision of decisions under the electric railway classifications has been effected.

During the preparation of both revised and new classifications, the assistance of the carriers was secured, as in the past, through the issuance of the classifications in tentative form for criticism, and through conferences between representatives of the divisions of carriers' accounts and of the carriers. The Commission has acknowledged the helpful co-operation of the carriers in this work.

I. C. C. Ann. Rep. 1914.

Speaking of the work accompanished by the division along these lines, the Commission, in its Annual Report for 1916, commented as follows:

"The work of examining the accounts of carriers in their offices is done by field examiners, who, after years of practical common-carrier accounting experience, have been trained in the Commission's service. They accomplish their duties by means of the general examination and the special examination, the former embracing a general survey of all the accounts and departments of a carrier, the latter being confined to a special investigation of particular features of the accounts. Practices at variance with our regulations are recorded in a report. After review, immediate action is taken to require the carrier to discontinue and correct the irregular practices reported, this being accomplished either by correspondence or conferences with the carrier's accounting officers.

"During the past year a distinct advance has been made in the methods of conducting examinations and handling reports, which, with improvements in organization, has resulted in a larger number of examinations and consequent correction of a greater number of erroneous practices than in any previous two years of the division's existence. Each erroneous practice adjusted marks a step toward complete uniformity.

"The great majority of erroneous practices disclosed by the examinations conducted by the division are not the result of willful intent and it has usually been possible to effect adjustments without resorting to extreme measures. In fact, it may be said that most accounting officers of carriers are now in full accord with our accounting regulations and are inclined to welcome examinations as assisting them in keeping their accounts properly."

I. C. C. Ann. Rep. 1916.

The underlying principles of these accounting systems prescribed by the Commission are now well established.

The current accounting publications issued by the Commission are:

#### STEAM ROADS.

	Effective Date
Classification of Operating Revenues and Expenses.....	July 1, 1914
Classification of Operating Expenses—Condensed .....	July 1, 1914
Classification of Investment in Road and Equipment.....	July 1, 1914
Classification of Train-miles, Locomotive-miles, and Car-miles .....	July 1, 1914
Classification of Income, Profit and Loss, and General Balance Sheet .....	July 1, 1914
Interpretations of Accounting Classifications.....	July 1, 1914
Regulations to Govern the Destruction of Records.....	July 1, 1915
Regulations to Govern the Issuing and Recording of Passes .....	Jan. 1, 1917

#### ELECTRIC RAILWAYS.

Uniform System of Accounts.....	July 1, 1914
Interpretations of Accounting Classifications.....	July 1, 1915
Regulations to Govern the Destruction of Records.....	May 1, 1913
Regulations to Govern the Issuing and Recording of Passes .....	Jan. 1, 1917

#### CARRIERS BY WATER.

Classification of Operating Expenses .....	Jan. 1, 1911
Classification of Operating Revenues .....	Jan. 1, 1911
Form of General Balance Sheet.....	Jan. 1, 1913
Classification of Expenditures for Real Property and Equipment .....	Jan. 1, 1913
Classification of Income, Profit and Loss Accounts.....	Jan. 1, 1913
Regulations to Govern the Destruction of Records.....	Jan. 1, 1913

#### EXPRESS COMPANIES.

Uniform System of Accounts.....	July 1, 1914
Interpretations of Accounting Classifications.....	July 1, 1910
Regulations to Govern the Destruction of Records.....	July 1, 1915

It is the present intention to revise the interpretations of account classifications and also to publish regulations to govern the issuing and recording of franks.

#### PIPE-LINE COMPANIES.

Classification of Investment in Pipe Lines, Pipe-Line Operating Revenues and Pipe-Line Operating Expenses.....Jan. 1, 1915  
Regulations to Govern the Destruction of Records.....July 1, 1915

This system of accounts to be completed by the issuance of a classification of income, profit and loss, and general balance sheet accounts.

#### SLEEPING-CAR COMPANIES.

Classification of Revenues and Expenses of Sleeping-Car and Other Operations.....July 1, 1912  
Regulations to Govern the Destruction of Records.....Oct. 1, 1911

This system of accounts to be revised and completed.

#### TELEPHONE COMPANIES.

Uniform System of Accounts (Classes A and B).....Jan. 1, 1913  
Uniform System of Accounts (Class C) .....Jan. 1, 1915  
Regulations to Govern the Destruction of Records.....Feb. 1, 1914  
Interpretations of Accounting Classifications.....July 1, 1916

#### TELEGRAPH AND CABLE COMPANIES.

Uniform System of Accounts.....Jan. 1, 1914  
Regulations to Govern the Destruction of Records.....Feb. 1, 1914

The regulations governing the issuing and recording of passes of steam roads have been revised and amplified to include instructions for the guidance of electric railway companies and water carriers.

In its Annual Report for 1915, the Commission referred to the increased value of the division's work, as follows:

"Material progress has been made toward standardization of accounting practices. Examinations of carriers' accounts, an important function of the division, are being carried forward by the corps of examiners.

"Studies of particular phases of accounting practices have been made through the medium of special reports required of carriers. These have proven so satisfactory as an auxiliary to the work being done by examiners of accounts in the determination of accounting practices that it is the intention to increase the number of studies during the coming year.

"The special work done by examiners and the results derived from the studies mentioned have yielded information of great value which has materially contributed to enhancing the good effect and beneficial results accomplished through examinations of carriers' accounts.

"The establishment of branch offices at New York, Pittsburgh, Chicago, St. Paul, St. Louis, New Orleans and San Francisco has resulted in considerable economy of time and in sufficient reduction of traveling expenses to permit a substantial increase in the number of employees.

I. C. C. Ann. Rep. 1915.

I. C. C. Ann. Rep. 1916.

The accounting regulations of the Commission were sustained by the Supreme Court of the United States, in **Kansas City Southern Ry. Co. vs. United States**, 231 U. S. 423.

This case involved an order of the Commission, made under section 20 of the Act, requiring carriers, where, in making improvements, they abandon property, to charge replacement cost thereof, less salvage, to operating expenses.

After calling attention to the fact that the constitutional validity of the section was sustained in the case of **Interstate Commerce Commission vs. Goodrich Transit Co.** (224 U. S. 194, 211, 214), the court, speaking through Mr. Justice Pitney, and affirming a decree of the Commerce Court, upheld the validity of the Commission's order, held to be unsound contentions of counsel for the Kansas City Southern which may be summarized as follows:

1. That Congress, in conferring upon the Commission power to prescribe the forms of accounts, records, and memoranda, to be kept by carriers, recognized a distinction between form and substance, and did not authorize the



Commission to interfere with the internal affairs of the carriers.

2. That in amending section 20 in 1906, Congress adopted a well-defined meaning of the term "operating expenses," which precluded the view that abandoned property could be included therein.

3. That property originally acquired because necessary in the construction of a road and afterwards abandoned only because rendered unnecessary by the improvement and development of the property, should remain in the property account as a part of the stockholders' investment.

4. That compliance with the Commission's order will render impossible an accurate report of either the cost of the carrier's property or the cost of its improvements or its operating expenses.

5. That the order was arbitrary, because not founded upon a reasonable basis.

In replying to the contention that, while the theory of the Commission might justify a charge to profit and loss, it did not justify a charge to operating expenses of the replacement cost of the property abandoned less salvage, the court, after pointing out that this involved a question of policy, said:

"But did we agree with appellant that the abandonments ought to be charged to surplus or to profit and loss, rather than to operating expenses, we still should not deem this a sufficient ground to declare that the Commission had abused its power. So long as it acts fairly and reasonably within the grant of power constitutionally conferred by Congress its orders are not open to judicial review."

In the earlier case of **Interstate Commerce Commission vs. Goodrich Transit Co.**, *supra*, the Supreme Court judi-



cially accounted for the statute, upon the following grounds:—

“It is true that the accounts required to be kept are general in their nature and embrace business other than such as is necessary to the discharge of the duties required in carrying passengers and freight in interstate commerce by joint arrangement between the railroad and the water carrier, but the Commission is charged under the law with the supervision of such rates as to their reasonableness and with the general duty of making reports to Congress which might require a knowledge of the business of the carrier beyond that which is strictly of the character mentioned. If the Commission is to successfully perform its duties in respect to reasonable rates, undue discriminations and favoritism, it must be informed as to the business of the carriers by a system of accounting which will not permit the possible concealment of forbidden practices in accounts which it is not permitted to see and concerning which it can require no information. It is a mistake to suppose that the requiring of information concerning the business methods of such corporations, as shown in its accounts, is a regulation of business not within the jurisdiction of the Commission, as seems to be argued for the complainants. The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission is not to enable it to regulate the affairs of the corporations not within its jurisdiction, but to be informed concerning the business methods of the corporations subject to the Act that it may properly regulate such matters as are really within its jurisdiction. Further, the requiring of information concerning a business is not regulation of that business.”

Compare:

State vs. L. & N. R. R. Co., 49 So. Rep. 39

(1) **Claims Against Carriers.** As a sub-division or department of the Division of Carriers' Accounts, a division of claims against carriers is conducted.

It has long been the belief of the Commission that uniformity in the carriers' methods and rules of procedure in handling claims, both overcharge and general demands, would be of value, not only to the carriers but to shippers, and would give the Commission a wider assurance of the correct application of the law in the adjustment of claims.

The Commission has continued, through joint conferences with carriers represented by the Freight Claim Association, and shippers represented by the National Industrial Traffic League, to help bring about such improvement. One of the results of these joint conferences was the approval by both carriers and shippers of standard forms for use in presenting claims against carriers. The Commission also has approved the forms and has recommended their general use and adoption. Already their use has become quite general. These forms should do much to obviate the differences of opinion which have existed relative to the evidence necessary to support claims when presented. To these differences of opinion have been attributable a large part of the delays in settling claims, and much of the friction and bad feeling so often existing between carriers and shippers.

Another result was an inquiry as to the time necessary to adjust claims. This inquiry was pursued through the medium of special reports required of steam carriers having annual revenues exceeding \$1,000,000. The mileage represented by these carriers is 220,062, or approximately 90 per cent of the total steam railway mileage of the United States.

The following tabulations, constitute a record of the claims presented to carriers and the number of these claims adjusted by them during the period of six months ended June 30, 1914:

### Claims Presented.

	Loss and Damage.	Over- charge.	Total.
Interstate:			
Local .....	379,067	117,445	496,512
Interline .....	864,317	401,722	1,266,039
Total .....	1,243,384	519,167	1,762,551
Intrastate:			
Local .....	397,902	120,937	518,839
Interline .....	98,495	45,111	143,606
Total .....	496,397	166,048	662,445
Grand total .....	1,739,781	685,215	2,424,996

Percentage of "interstate" claims, 73; percentage of "intrastate" claims, 27.

NOTE.—The term "local" pertains to claims in connection with traffic handled by one carrier; "interline," handled by two or more carriers.

### Number of the Above Claims Adjusted.

#### MANNER OF ADJUSTMENT.

CHARACTER OF CLAIMS.	Paid.	Declined.	With- drawn.	Total.
Loss and damage.....	1,240,837	107,687	20,062	1,368,586
Overcharge .....	439,204	78,603	9,039	526,846
Grand total .....	1,680,041	186,290	29,101	1,895,432
Percentage .....	88.6	9.8	1.6	.....

### Division of Time in Which Adjustments Were Accomplished.

Period of Adjustment.	Loss and Damage.	Over-charge.	Total.	Percent- age relation of each period.
After receipt:				
Within 15 days .....	769,786	266,444	1,036,230	55
Between 15 and 30 days	248,869	115,437	364,306	19
Between 30 and 60 days	202,897	90,226	293,123	16
Between 60 and 90 days	89,562	33,550	123,112	6
Between 90 and 120 days	41,297	15,846	57,143	3
Between 120 and 180 days	16,175	5,343	21,518	1
Grand total .....	1,368,586	526,846	1,895,432	100

Note.—There remained unadjusted at the end of the six-months' period 529,564 claims, or 22 per cent of the claims received. This does not mean that these claims have been in the hands of carriers for six months; it means simply that at the end of a selected period 22 per cent of the claims received during that period were carried over to the next period.

It is not possible to make comparison with previous periods, as figures therefor are not available. These figures indicate, however, that, provided proper investigations have been made, claims are now being adjusted with a degree of promptness that deserves commendation. There would seem to be a basis for the assertion made by carriers that claims not settled within 15 or 30 days are of a special or peculiar character, requiring extended investigations, or are not properly presented. It is believed that the information obtained from these special reports will serve to stimulate carriers to even greater efficiency in the handling of claims.

The twenty-fifth annual report of the Interstate Commerce Commission contains a brief reference to the amounts paid by steam carriers for loss and damage to freight during each of the years 1908, 1909, and 1910, and to the downward trend of the payments from 1908 to 1910.

This downward trend was taken as indicating that the heavy drain upon the revenues of carriers represented by these payments had been checked, and as further indicating that there would continue to be a gradual reduction. That such a development did not follow is evidenced by the fact that the payments increased from \$21,941,232 in 1910 to \$30,885,454 in 1913, an increase of 40.8 per cent. Freight revenue increased 14.2 per cent in the same period. An idea of the vast increase in the payments for loss and damage during recent years may be gained from the fact that in 1900 carriers paid on this account \$7,055,622, and in 1913, \$30,885,454, an increase of 337 per cent. In the same period freight revenue increased 109 per cent.

Claims for loss and damage present opportunities for discrimination, the adjustment of many such claims being largely a matter of judgment which is frequently influenced by the volume of traffic controlled by particular claimants. A concession or an advantage created through the medium of a claim for loss and damage is, moreover, more difficult to detect and to establish than a direct concession from the lawfully published rate. The reason for this is obvious. Loss and damage claims often involve various questions of law and of fact, and there is no invariable or inflexible rule by which these questions can be determined. The interpretation of legal principles relative to questions of negligence and liability differs in different localities, a fact which augments the uncertainty of the application of the law and adds to the difficulties of determining the validity of such claims.

Competition for traffic plays no mean part in the adjustment of claims for loss and damage. The examinations of the accounts of carriers disclose many cases which justify the belief that certain claims of this character are

paid not because the carriers feel that the claims are valid, but because claimants threaten to divert traffic unless claims are paid, and because other carriers allow similar claims. Under the Act to Regulate Commerce carriers are charged with the duty of determining the correctness and lawfulness of claims before they may be paid, and in order to avoid discrimination it is obvious that all claims must be adjusted solely upon their merits and without regard to the traffic controlled by particular claimants.

Loss and damage to freight represent an economic waste, and the payments therefor increase the cost of transportation. For these and other reasons it follows that it is to the interest of the carriers, the shippers, and the general public that loss and damage to freight be reduced to a minimum. This can be accomplished only by ascertaining and removing the causes. Steps in this direction have been taken by the American Railway Association and the Freight Claim Association, and the Commission is lending its support to these efforts.

I. C. C. Ann. Rep. 1914.

In its report for 1915 the Commission announced the results of the special inquiry as to the time required by steam railway carriers to investigate and adjust claims received by them from shippers. The following tabulation shows claims presented to carriers having annual revenues exceeding \$1,000,000 and number of claims adjusted during the period indicated:

**Claims Presented to Carriers During the Calendar Year 1914.**

	Loss and Damage.	Over- charge.	Total.
Interstate:			
Local .....	713,245	219,404	932,649
Interline .....	1,615,494	757,406	2,372,900
Total .....	2,328,739	976,810	3,305,549



## Intrastate:

Local .....	765,764	224,894	990,658
Interline .....	181,087	86,144	267,231
Total .....	946,851	311,038	1,257,889
Grand total .....	3,275,590	1,287,848	4,563,438

Percentage of "interstate" claims, 72.44; percentage of "intrastate" claims, 27.56.

NOTE.—The term "local" pertains to claims in connection with traffic handled by one carrier; "interline" to that handled by two or more carriers.

### Number of Above Claims That Were Adjusted by Carriers Between Jan. 1, 1914, and Mar. 31, 1915.

	MANNER OF ADJUSTMENT.			
	Paid.	Declined.	Withdrawn.	Total.
Loss and damage.....	2,800,399	298,189	56,858	3,155,446
Overcharge .....	1,003,824	207,217	22,611	1,233,652
Grand total .....	3,804,223	505,406	79,469	4,389,098
Percentage .....	86.674	11.515	1.811	.....

### Division of Time in Which the Adjustments Were Accomplished Between Jan. 1, 1914, and Mar. 31, 1915.

Period of Adjustment.	Loss and Damage Claims.	Over- charge Claims.	Total.	Percent- age Rela- tion of Each Period.
After receipt:				
Within 15 days.....	1,574,712	548,140	2,122,852	48.366
Within 30 days.....	532,982	248,401	781,383	17.803
Within 60 days.....	456,213	208,201	664,414	15.138
Within 90 days.....	236,056	97,276	333,332	7.595
Within 120 days.....	155,883	61,240	217,123	4.947
Within 6 months.....	112,358	39,567	151,925	3.461
Within 1 year.....	83,421	29,608	113,029	2.575
Over 1 year .....	3,821	1,219	5,040	.115
Total .....	3,155,446	1,233,652	4,389,098	100

### Claims That Remained Unadjusted on Mar. 31, 1915.

Loss and damage .....	120,144
Overcharge .....	54,196
Total .....	174,340

It will be observed of the 4,563,438 claims presented to carriers, 4,389,098, or 96 per cent, were adjusted. Of the claims adjusted nearly 50 per cent were adjusted within 15 days after receipt by carriers, more than 65 per cent within 30 days, and all but 6 per cent within 120 days. From these figures it appears that much progress has been made by carriers in the matter of handling claims, and it is evident that their claims' departments are now organized on a more efficient basis than formerly.

I. C. C. Ann. Rep. 1915.

The appended classification of claims by causes and commodities is instructively interesting as a part of the work of this division indicating to some extent the risk involved in the transportation of particular commodities.—(This tabulation is taken from I. C. C. Ann. Rep. for 1915.)

### § 18. Division of Inquiry.

The division of inquiry has to do with seeming violations of the Act to Regulate Commerce, and of the Elkins Act, which come to the attention of the Commission. Perhaps 90 per cent of the matters so investigated and considered are disposed of without resort to the courts, and in great part through correspondence or conference with the carriers or shippers involved. A staff of special agents is employed almost continuously in field work. A staff of attorneys analyzes the evidence gathered, participates in the correspondence and conferences, and, in instances where prosecution is recommended by the Commission, prepares cases for presentation to grand juries and assists United States attorneys in such presentation and in the subsequent proceedings in the courts.

I. C. C. Ann. Rep. 1915.

In its annual report for 1915 the Commission after referring to the number of prosecutions instituted, spoke of the work of this division as follows:—

“The prosecutions outlined above, resulting from the division’s investigations, indicate the volume of work handled before grand juries and in the courts. However, the larger part of the field investigations made by the division did not disclose violations of law. It is proper to state that in many instances investigations of complaints made by shippers and others against carriers disclosed that the complaint was groundless and that the carrier’s practice was beyond criticism. Indeed, in one or two cases it was found that the carrier was not only complying with the law but that the very efficiency of its policing arrangements was the real reason for the complaint. As to several other matters investigated, while the practice involved was found to be questionable, the subject was handled by correspondence or conference and the objectionable features thus eliminated. As the strict requirements of the law become more completely appreciated it may be anticipated that the number of cases in which questionable practices can be corrected by conference rather than prosecution will increase.

#### § 19. Division of Statistics.

The work of the division of statistics includes the preparation of report forms, the analysis and correction of annual and other statistical reports from railways and other common carriers engaged in interstate commerce, and the compilation and publication of such matters therefrom as seem of general public interest.

The Commission has always considered it inadvisable to make publication of statistical matters in permanent form until after the reports on which such publications are based have had, as far as practicable, the benefit of

Careful scrutiny and correction of errors. The demand for the prompt publication of returns of steam roads seems to be largely met by the bulletins of revenues and expenses pertaining to Class I roads, which are published monthly.

Some time ago the division of statistics began the issuance of a daily bulletin of revenues and expenses of carriers by railway. This was chiefly for the benefit of the press. The bulletin shows the cumulative revenues and expenses of the more important railways as reported for the latest current month for which reports are received. The Commission's rules require that the reports of steam railway companies for a particular month be mailed on or before the last day of the following month and in consequence about the 25th of each month reports for the preceding month begin to be filed in this division. As soon as enough reports are on hand to make a compilation of significance, the daily bulletin showing comparative figures for the particular month for which the reports are made and also for the period from July 1 to the close of that month, as well as for the corresponding month and period of the previous year, is prepared and copies of it are given to the press and the public. Recently a bulletin compiled from the monthly reports of express companies also has been regularly made public for a similar purpose. Express companies, however, need a longer time for the preparation of their monthly reports than railway companies and are allowed three months in which to make them.

I. C. C. Ann. Rep. 1914.

(1) **Statistical Groups.** For the purposes of the different complications of physical and financial railway statistics, the country is divided into ten groups. These groups have no relation to the divisions of the country made for

the correspondence assignments to the several Commissioners, but are established with a view to overcoming great diversity of conditions of construction, operation, management, and association of railways in different portions of the country.

These groups or divisions are as follows:

GROUP I. This group embraces the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut.

GROUP II. This group embraces the states of New York, Pennsylvania, New Jersey, Delaware and Maryland, exclusive of that portion of New York and Pennsylvania lying west of a line drawn from Buffalo to Pittsburgh via Salamanca, and inclusive of that portion of West Virginia lying north of a line drawn from Parkersburg east to the boundary of Maryland.

GROUP III. This group embraces the states of Ohio, Indiana, the southern peninsular of Michigan, and that portion of the states of New York and Pennsylvania lying west of a line drawn from Buffalo to Pittsburgh via Salamanca.

GROUP IV. This group embraces the states of Virginia, North Carolina, South Carolina, and that portion of the state of West Virginia lying south of a line drawn east from Parkersburg to the boundary of Maryland.

GROUP V. This group embraces the states of Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, and that portion of Louisiana east of the Mississippi River

GROUP VI. This group embraces the states of Illinois, Wisconsin, Iowa, Minnesota, the northern peninsular of the state of Michigan, and that portion of the states of North Dakota and Missouri lying east of the Missouri river.

**GROUP VII.** This group embraces the states of Montana, Wyoming, Nebraska, that portion of North Dakota and South Dakota lying west of the Missouri river, and that portion of the state of Colorado lying north of a line drawn east and west through Denver.

**GROUP VIII.** This group embraces the states of Kansas, Arkansas, that portion of the state of Missouri lying south of the Missouri river, that portion of the state of Colorado lying south of a line drawn east and west through Denver, that portion of the state of Texas lying west of Oklahoma, and the state of Oklahoma, and the portion of New Mexico lying northeast of Santa Fe.

**GROUP IX.** This group embraces the state of Louisiana, exclusive of the portion lying east of the Mississippi river, the state of Texas, exclusive of that portion lying west of Oklahoma, and the portion of New Mexico lying southeast of Santa Fe.

**GROUP X.** This group embraces the states of California, Nevada, Oregon, Idaho, Utah, Washington, Arizona, and that portion of the state of New Mexico lying west of Santa Fe.

I. C. C. Ann. Rep. 1889, 1899 and 1904.

## § 20. Division of Tariffs.

This division, which is in charge of the auditor of the Commission, is devoted to the receiving, acknowledging and filing of the tariffs, classifications, contracts, and documents filed with the Commission under the requirements of section 6 of the Act. This department is also charged with the necessary correspondence with the carriers concerning their failures to meet the requirements of the Act and the orders and rulings of the Commission in the construction, publication and filing of their tariffs.



This division also prepares rate data and information for use in connection with the official work of the Commission in investigations and formal and informal cases.

The rate work of the division of tariffs continues to increase and grow in importance, notwithstanding the fact that, due to the Commission's regulations for the construction and filing of tariffs, the tariff publications filed are, on the whole, far more understandable than heretofore. This increase is largely accounted for by the fact that during recent years a great many changes in rates and fares have been made.

This division also answers requests for information regarding tariffs filed with the Commission.

At the direction of the Commission, the Auditor furnishes certified copies of the contents of tariffs and other documents in this department for use as evidence in court proceedings.

(1) **Tariff Filing System.** The tariff filing system of the Commission is constructed upon a classification only of the carrier issuing the tariff and the sequence of the serial Interstate Commerce Commission numbers designating such tariffs, as distinguished from the ordinary methods of classifying tariffs for filing purposes according to the commodities or articles to which they apply. The Commission's system is direct and simple, and avoids confusion and uncertainty that might arise from any other or less simple system.

During the 12 months ended October 31, 1915, 149,449 tariff publications containing changes in rates, fares, classifications, or charges were filed with the Commission. This is an increase of 418 over the previous period of 11 months covered by the last previous report of the Commission. It will be interesting to observe the decrease in the number of tariff publications filed since the Commis-

sion perfected its regulations governing the construction and filing of tariffs in 1908:

### SCHEDULES FILED.

12 Months Ended:	Number Filed.	Less than in 1908
Nov. 30, 1908.....	228,403	.....
Nov. 30, 1909.....	184,303	44,100
Nov. 30, 1910.....	154,588	73,815
Nov. 30, 1911.....	121,829	106,574
Nov. 30, 1912.....	108,766	119,637
Nov. 30, 1913.....	141,257	87,146
Oct. 31, 1914 (11 months).....	149,031	62,257
Oct. 31, 1915.....	149,449	78,954
Oct. 31, 1916.....	106,442	121,961

I. C. C. Ann. Rep. 1915.

I. C. C. Ann. Rep. 1916.

(2) **Suspensions of Schedules and Tariffs.** This division prepares data and information relative to new tariffs filed by carriers increasing rates or interfering with or changing long established customs and conditions, as the Commission is now empowered by section 15 of the Act to suspend any tariff or schedule from taking effect for a period not to exceed 120 days pending an investigation by the Commission.

The duty that confronts the Commission when a proposed new tariff schedule has been complained of is to determine as fully as possible within the time before the indicated effective date of the proposed tariff schedule whether *prima facie* it represents an appropriate exercise of the carrier's right to initiative rates, or whether it appears *prima facie* to go beyond the legitimate exercise by the carrier of this function. In order to acquaint itself as far as possible with the facts upon which to exercise its discretionary power of suspension, the Commission requested by circular that in connection with the filing of tariffs carrying increased rates, fares, or charges, the officer

of the carrier, or the agent who issues the tariff, shall present a concise statement of the increases proposed, showing in a general way the measure thereof and reasons therefor. The Commission has also by circular requested that if protest is to be presented, it be filed as far in advance of the effective date of the rate, fare, or charge protested against as is possible, and has called attention to the fact that because of the short time afforded to make proper inquiry, it may be necessary to deny suspension in instances in which the protest is not filed with the Commission at least 10 days prior to such effective date.

In its annual report for 1915, the Commission reports the work of this division as follows:—

“The number of proceedings instituted under this docket during the period November 1, 1914, to October 31, 1915, is 199, a decrease of 4 as compared with the previous year. During that period 210 such cases were disposed of, an increase of 51 as compared with the preceding year. In 56 instances the tariffs under suspension were voluntarily withdrawn by the carriers; in 3 instances the protests were withdrawn and the orders of suspension vacated; in 1 instance reductions were made in the proposed rates, whereupon the protest was withdrawn and the order of suspension vacated; in 50 instances the proposed changes were allowed as filed; in 38 instances they were allowed in part; in 59 instances they were disallowed; and in 3 instances the orders of suspension were vacated by the Commission, good cause appearing therefor. In 3 instances proposed increases, which were disapproved prior to the period covered by this report, were, upon rehearing, permitted to become effective. The Commission declined to exercise the authority to suspend schedules with respect to proposed changes in 368 cases, an increase of 157 as compared with the previous year.”

I. C. C. Ann. Rep. 1915.

The work of this division is carried on under a suspension board, composed of the Commission's department heads in this division.

### § 21. Division of Safety.

The Commission has grouped its work in the administration of the safety appliance and related acts in a division of safety.

Under this division is included the detailed administration of the safety appliance acts, the investigation of accidents, safety devices, and locomotive boilers.

See annual reports of the Commission and special reports of the division of safety for detailed report of the work of this division.

(1) **Inspection of Locomotive Boilers.** The work of this division began in 1912, and the value of the results obtained is manifest from the following tabulations:—

#### Locomotives Inspected, Number Found Defective, and Number Ordered Out of Service.

	1916	1915	1914	1913	1912
Number of locomotives inspected.....	52,650	73,443	92,716	90,346	74,234
Number found defective.....	24,685	32,666	49,137	54,522	48,768
Percentage found defective.....	47	44.4	52.9	60.3	65.7
Number ordered out of service..	1,943	2,027	3,365	4,676	3,377

#### Number of Accidents, Number Killed, and Number Injured, with Percentage of Decrease.

	1916	1915	1914	1913	1912
Number of accidents.....	352	424	555	820	856
Decrease from previous year, per cent ...	...	23.6	32.3	4.2	...
Decrease from 1912, per cent.....	...	50.5	...	...	...
Number killed .....	29	13	23	36	91
Decrease from previous year, per cent ...	...	43.5	36.1	60.4	...
Decrease from 1912, per cent.....	...	85.7	...	...	...
Number injured.....	407	467	614	911	1,051
Decrease from previous year, per cent ...	...	24.0	32.6	9.3	...
Decrease from 1912, per cent.....	...	53.5	...	...	...

I. C. C. Ann. Rep. 1915.

I. C. C. Ann. Rep. 1916.

The tables given above show in concrete form the number of locomotives inspected, the number and percentage found defective, and the number ordered out of service on account of not meeting the requirements of the law, during each of the first four years the law had been in force.

They also show the total number of accidents due to failure from any cause of locomotive boilers or their appurtenances and the number killed or injured thereby, with the percentage of decrease each year since the law became effective, also the total decrease during that period.

The data contained therein reflect the work performed and explanation thereof or comment thereon seem not to be necessary.

The Commission, in 1915, commented on the work of this division as follows:—

“All accidents reported to this division have been carefully investigated, the cause determined when possible, and the information thus obtained given to the carriers to be used in preventing similar accidents.

“Prompt and proper accident reports materially assist in the work of investigation and reduce the delay to equipment, and as carriers now fully understand the requirements in this respect, such reports, with rare exceptions, are properly made.

“The number of applications for an extension of time for the removal of flues as provided in rule 10 has increased over the previous year, and this has materially added to the work of the division, as such extensions are granted only after a special inspection of the locomotive has been made.

“During this year 1,099 applications for extension of time for removal of flues were filed by 284 carriers; of this number 638, or 58 per cent, were granted; 461, or 42 per cent, were refused, or granted only after defects disclosed by inspection had been properly repaired.

"It is to be presumed that carriers desire to properly maintain their locomotives, therefore an application for an extension of time for removal of flues from a locomotive which is found on examination to be defective indicates that the railroad company's inspectors have not discovered the defective conditions.

"Alteration reports which are being filed showing reinforcement of boilers which have a factor of safety below the standard fixed by the order of the Commission dated June 9, 1914, indicate that diligent efforts are being made by the carriers to meet the requirements of that order, and with a few exceptions very satisfactory progress is being made.

"The act of March 4, 1915, amending the locomotive boiler inspection law by extending its provisions to include the entire locomotive and tender and all their parts has presented additional and important problems, and will materially increase the work of this division.

"The preparation of rules fixing minimum limits for all parts of locomotives and tenders so that the requirements might be definite has been diligently pursued and is progressing as rapidly as the necessity for accuracy will permit.

"Very satisfactory progress is being made in arranging the work of the division so that the additional duties imposed by the law may be properly performed. This will probably make it necessary for the inspectors to follow more closely the requirements of section 6 of the law, which provides that their 'first duty shall be to see that the carriers make inspections in accordance with the rules and regulations established or approved by the Interstate Commerce Commission, and that carriers repair the defects which such inspections disclose' before the locomotives are again put in service, and may result in eliminating reports to railroad officials of minor defects discovered by the inspectors which for the benefit of the carriers have been directed to their attention.



"No formal appeal from the decision of inspectors, as provided in section 6 of the law, have been filed during the year. In one instance an appeal was filed from the findings of inspectors in an accident investigation. Reinvestigation by an assistant chief inspector, assisted by inspectors from other districts, not only sustained the original report but disclosed additional evidence in support thereof.

"During the year 2,130 defective parts of locomotives not covered by the boiler inspection law, almost all of which were defective wheels, were reported to this division by inspectors and directed to the attention of the railroad officials, with request that proper repairs be made before the locomotives were put in service. Such matters are now covered by the amended law and will be handled in accordance therewith."

## § 22. Division of Valuation.

By the Act of March 1, 1913, the Commission is required to value the property of all common carriers subject to the Act to Regulate Commerce. The valuation Act provided that this work should be begun within 60 days, and that a report shall be made to each regular session of Congress showing the progress made.

For the purpose of executing the provisions of this Act, the Commission organized, within the 60 days, a division of valuation, corresponding with its divisions of statistics, accounts, tariffs, etc., such division being placed under the direction of Charles A. Prouty, formerly a member of the Commission and who resigned therefrom to accept the presidency of the physical valuation board. Since, after the initial valuation has been made the Commission is required to keep the same up to date, this division will be permanent and will embrace an important part of the work of the Commission.

The Act provides that an inventory shall be made of the property to be valued, and that the Commission shall ascertain and report the cost of reproduction new, and the cost of reproduction less depreciation. This requires the identification and examination of the property by the engineers of the Commission and is a work of great extent and detail. For the purpose of executing this provision of the Act, the United States has been divided into five sections, by states, each section embracing approximately 50,000 miles of railway, and so distributed that work can be conducted both during the summer and the winter months. These divisions are as follows:

(1) **Eastern District**—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, District of Columbia, Virginia, West Virginia and North Carolina.

(2) **Central District**—Michigan, Wisconsin, Minnesota, Iowa, Illinois, Louisiana and Arkansas.

(3) **Western District**—North Dakota, South Dakota, Nebraska, Colorado, Kansas, Missouri, Oklahoma and Texas.

(4) **Southern District**—Ohio, Indiana, Kentucky, Tennessee, Alabama, Mississippi, Georgia, South Carolina, Florida, Panama and Porto Rico.

(5) **Pacific District**—Montana, Wyoming, Utah, Idaho, Nevada, Washington, Oregon, California, Arizona, New Mexico and Alaska.

The Commission has appointed five principal engineers, one of whom has been placed in immediate charge of each of these divisions. The five together constitute an engineering board which formulates general plans for the pros-

ecution of the work and supervises the execution of those plans, thus securing the necessary uniformity.

I. C. C. Ann. Rep, 1914.

Broadly speaking, the present work of the Commission under this Act falls under two general heads: First, ascertainment of the cost of reproduction of the property new, and also less depreciation; second, ascertainment of the original cost of the property to date, together with certain information as to its financial and corporate history. The first is largely engineering, the second accounting. The Act also requires certain specific information as to lands, rights of way, and terminals. The value of these is a considerable part of the total value of a railway property. It follows that the work of the division of valuation is done through three subdivisions—engineering, accounting and land. There is also a branch of the division of law which deals with questions arising in the general conduct of this work.

For the purpose of the initial work a single railroad was selected in each district, the maps of which were in fairly good condition and which was thought to offer a variety of problems. The roads selected, together with the approximate length of each, are given below:

District.	Road.	Length, Miles.
Eastern.....	Norfolk Southern .....	900
Southern.....	Atlanta, Birmingham & Atlantic.....	600
Central.....	New Orleans, Texas & Mexico.....	175
Western.....	Texas Midland.....	122
Pacific.....	San Pedro, Los Angeles & Salt Lake.....	1,000

At first a single field party was put at work upon each road. From time to time additional field parties were organized, and the forces have been gradually increased until, beginning with the month of September, 1915, eight field parties were employed in each district. A regular

field party is composed of nine men, as follows: One assistant field engineer, one recorder, two computers, one instrument man, one rodman, one head chainman, one rear chainman, and one tapeman.

I. C. C. Ann. Rep. 1914.

The valuation work now being carried forth under the direction of this division is the most important and monumental service as yet exacted of the Commission in its administration of the regulatory legislation. We feel constrained, therefore to quote at length from the 1916 annual report of the Commission on this subject:—

“It was stated in our last annual report that the engineering forces of the Commission engaged in valuation work had been expanded as far as was thought advisable and that those forces if maintained as then existing should cover from 45,000 to 50,000 miles of road per annum. For the last year the field engineering forces have been maintained at that point and from October 1, 1915, to September 30, 1916, covered 50,840.38 miles of road.

“There are in the United States about  $1\frac{1}{2}$  miles of tracks of all kinds for each mile of road, so that 50,000 miles of road would call for 75,000 miles of all tracks. In fact, the track mileage covered during this year was 77,348.51, thus indicating that the properties under survey were of at least average difficulty.

“If the same rate of progress should be maintained in the field for the future as during the past year, our road and track surveys should be completed by January 1, 1920. Some parties will complete their assignment before this and some after, but this should be about the average. There will still be a certain amount of field work to be done in connection with mechanical and structural work, but this probably will not require much time nor a considerable force.

“Our computing forces have during the same year assembled, ready for pricing, about the same number

of miles. These are not, however, the same miles, since there is of necessity a considerable interval between the completion of the field work and the completion of the office work. Taking the country as a whole, there is probably a lag of six months between the field and the office work.

"It will be seen, therefore, that our forces have inventoried and computed for pricing approximately 50,000 miles of road during the last year, and that at this rate of progress the field work should be completed in slightly over three years and the office work in from six months to a year afterwards.

"The application of prices and the writing out of the final assembly sheets is a comparatively short and inexpensive task when the prices have been determined. The ascertainment of the prices themselves has proved to be a more extensive work than was anticipated.

"All the principal carriers were required to report actual prices paid by them for railway material and labor during the 5 years and in some instances during the 10 years preceding June 30, 1914. These returns were exceedingly voluminous and it has been a very considerable task to compile the information thus furnished.

"The prices thus obtained are those paid by the railroad and do not include the cost of putting the article in place as a part of the railroad. The ascertainment of this cost is much more difficult than the determination of the unit price. As bearing upon the expense of installation, many actual transactions have been analyzed and examined and this has required more time than was expected.

"The statute requires that when a tentative valuation has been reached notice of the valuation so placed upon the various classes of property shall be served upon the Attorney General of the United States, the governor of the state in which the property is situated, the carrier itself, and such other parties as the Commission may designate. Thirty days are allowed in-



interested parties in which to object to the tentative valuation as fixed by the Commission. Subsequently we must hear and decide the questions raised by these protests.

"There are many fundamental questions common to the valuation of all railroad properties which will be raised by objection to these tentative valuations and which must be decided before we can make up and transmit to Congress a final valuation. Since the act gives to all interested parties the right to be heard, we have not felt justified in reaching or announcing a conclusion upon these matters in advance of our hearings upon these tentative reports.

"Certain tentative valuations have been served and the questions raised by the protests to them will be heard and decided in due course. Since many of these questions are common to all properties, their decision in these first cases may be controlling in other cases.

"As soon as these fundamental questions have been passed upon there is no reason why tentative valuations can not be completed and served at substantially the same rate that our field work proceeds. The rapidity with which valuations can be made final and reported to Congress must depend upon the number and character of the objections which are made to the tentative valuations.

**"Land.** The road mileage of our land forces has never equaled, and does not yet equal, that of the engineering section, but our land force is being somewhat increased, its efficiency is improving, and it is expected that land values will be ready for application in all cases as soon as the work of our engineers is completed.

**"Telegraph and Telephone.** Our last report stated that the field parties then in service in the telegraph branch were covering about 6,000 miles of pole line per month and that the same number of parties would probably be maintained for the future. This has been done, and for the year from October 1, 1915, to Sep-



tember 30, 1916, 74,124.09 miles of telegraph pole line was inventoried.

"The original intention was to push to a speedy completion our work upon telegraph properties, but it has been found impossible to obtain from the telegraph companies the information which must precede the making of a proper inventory, and it is also found more convenient to carry on our telegraph work in connection with our engineering work upon the railroad with which the telegraph is usually connected. It is probable, therefore, that about the same force will be maintained in the future as is now in service and that this force will show about the same rate of progress."

### § 23. Division of Indices.

This division prepares indexes for the several classes of reports made by the Commission. The service is illustrated in the following excerpt from the annual report of the Commission for 1916:

"During the year ended October 31, 1916, this division has prepared the index digests to volumes 36, 37, 38, 39, and 40 of the reports of the Commission, together with the table of cases reported therein, the table of cases cited, and the lists of commodities and localities involved in these cases. It has also prepared for these volumes a list of the cases disposed of without printed reports, such as cases dismissed for want of prosecution or on motion of complainant.

"All state and federal decisions construing the act to regulate commerce and acts supplementary thereto or amendatory thereof, as well as state and federal decisions involving a construction of the commerce clause of the Constitution or touching the powers or duties of the Commission have been indexed.

"An index digest, together with a table of cases, table of cases cited, and a list of commodities and localities for all unreported opinions, 2,249 in number, has also been prepared.

"This division also maintains a comprehensive current index by subject matter, commodity, locality, and docket number of all decisions that have been rendered by the Commission."

I. C. C. Ann. Rep. 1915.

#### **§ 24. Library of the Commission.**

On November 3, 1914, the services of an expert cataloguer were secured, whose time has been devoted almost exclusively to recataloguing the library in accordance with the methods employed by the Library of Congress. Printed catalogue cards are secured from the Library of Congress in sufficient quantities to insure the proper cataloguing of each book and pamphlet according to author, subject and title. When this work is completed the card catalogue will be a complete digest of all the material in the library. The card catalogue now contains 16,960 cards.

In round numbers the library has 13,500 bound volumes and 10,500 pamphlets, exclusive of books and pamphlets in the various divisions. In addition to works on transportation, the library has a law collection consisting of the standard sets of federal and state decisions, digests, statutes, encyclopedias and law treatises.

I. C. C. Ann. Rep. 1916.

#### **§ 25. Publications of the Commission.**

(1) **Annual Reports and Publications of the Commission.**  
Until 1914 the Commission reported annually to Congress on or before the 1st day of December, in each year, but the sundry civil bill, enacted in August, 1914, requires the substance of the annual reports to be in the hands of the Public Printer by November 15 of each year, and the Commission's Annual Reports for subsequent years close on October 31.

I. C. C. Ann. Rep. 1914.

Very early in its history, prior to the amendment of March 2, 1889, the Commission reported to the Secretary of the Interior and he in turn transmitted the report to Congress.

U. S. Stats. L. 855.

The report is required by the Act to "contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission."

Act to Regulate Commerce, section 21.

The annual report of the Commission contains a yearly review of the official work of that body, with a syllabi of the decisions of the Commission for the previous year. These reports also review yearly the decisions of the courts affecting the work of the Commission or the commerce clause of the Constitution.

I. C. C. Ann. Rep. 1904, containing syllabi of all cases previously decided by the Commission.

The important publications of the Commission are as follows:

ABANDONED PROPERTY. See Valuation Order 10.

#### ACCIDENTS.

Accident bulletin, collisions, derailments, and other accidents resulting in injury to persons, equipment, or roadbed, arising from operation of railways used in interstate commerce. [Quarterly.] 5c a single copy, 20c a year.

This publication can be supplied from the 1st number, Sept. 1901, to date. The statistics are from monthly reports made to the Commission by the railroads.

Air Line Junction, Mo. Report of accident on the Kansas City Southern Railway near Air Line Junction, Oct. 19, 1914. 6 pages, illus. 5c.

## ACCIDENTS—Continued.

- Alford, Pa. Report of accident on Delaware, Lackawanna & Western Railroad near Alford, Oct. 31, 1914. 23 pages, illus. 5c.
- Antioch, Ill. Report upon accident on Cincinnati, Hamilton & Dayton Railway near Antioch, Aug. 25, 1912. 7 pages, illus. 5c.
- Attica, Ind. Report of accidents on Wabash Railroad at Attica, Apr. 5, 1914. 20 pages, illus. 5c.
- Bigelow, Minn. Report of accident on Chicago, St. Paul, Minneapolis & Omaha Railway near Bigelow, Feb. 9, 1914. 40 pages, illus. 10c.
- Bowerston, Ohio. Report of accident on Pittsburgh, Cincinnati, Chicago & St. Louis Railway near Bowerston, Dec. 13, 1912. 8 pages. 5c.
- Brant, Mo. Report of accident on Missouri Pacific Railway at Brant, May 21, 1913. 6 pages, illus. 5c.
- Buckatunna, Miss. Report of accident on Mobile and Ohio Railroad near Buckatunna, Oct. 19, 1913. 9 pages, illus. 5c.
- Chelsea, Okla. Report of accident on St. Louis & San Francisco Railroad near Chelsea, Oct. 29, 1913. 11 pages, illus. 5c.
- Clayton, Ala. Report of accident on Central of Georgia Railway near Clayton, Nov. 13, 1913. 13 pages, illus. 5c.
- College Point, Long Island. Report of accident on Long Island Railroad near College Point, Sept. 22, 1913. 11 pages, illus. 5c.
- Cosgrove, Nev. Investigation of accident to locomotive No. 2833, operated by Southern Pacific Company, which occurred 1½ miles west of Cosgrove, Oct. 3, 1912, report of chief inspector of locomotive boilers. 7 pages, illus. 5c.
- Dresden, Ohio. Report of accident on Pennsylvania lines west of Pittsburgh, near Dresden, Dec. 3, 1912. 4 pages. 5c.
- Eastabuchie, Miss. Report of accident on New Orleans & Northeastern Railroad near Eastabuchie, May 6, 1912. 8 pages, illus. 5c.
- Eightyfour, Pa. Report of accident on Baltimore and Ohio Railroad at Eightyfour, Apr. 30, 1915. 41 pages, illus. 10c.
- Felton, Pa. Report of accident on Baltimore and Ohio Railroad at Felton, Dec. 17, 1915. 16 pages. 5c.
- Georgia, Vt. Report of accident on Central Vermont Railway near Georgia, Nov. 16, 1913. 10 pages. 5c.
- Gothenburg, Nebr. Report of accident on Union Pacific Railroad at Gothenburg, Mar. 14, 1913. 6 pages, illus. 5c.
- Green's Farms, Conn. Investigation of accident on New York, New Haven & Hartford Railroad at Green's Farms, Nov. 16, 1912. 4 pages. 5c.
- Hays Mill, Ala. Report of accident on Louisville & Nashville Railroad near Hays Mill, Oct. 1, 1912, accompanied by Report of engineer-physicist of Bureau of Standards, covering investigation of broken rail. 1913. 11 pages, illus. 5c.
- Hyde Park, N. Y. Report of accident on New York Central & Hudson River Railroad at Hyde Park, Mar. 31, 1912, accompanied

## ACCIDENTS—Continued.

- by Report of engineer-physicist of Bureau of Standards. 31 pages, illus. 5c.
- Indianapolis, Ind. Report of collision on Cincinnati, Hamilton & Dayton Railway at Indianapolis, Nov. 13, 1912. 7 pages. 5c.
- Kinmundy, Ill. Investigation of accident on Illinois Central Railroad at Kinmundy, Ill., Jan. 22, 1912. 8 pages. 5c.
- Lakeview, Wash. Report of accident on Northern Pacific Railway near Lakeview, May 12, 1913. 10 pages, illus. 5c.
- Livingston, Ala. Report of accident on Alabama Great Southern Railroad near Livingston, on Sept. 18, 1914. 8 pages, illus. 5c.
- Lockport, N. Y. Report of accident on International Railway near Lockport, Jan. 25, 1913. 5 pages. 5c.
- Los Angeles, Cal. Report in re investigation of accident on Pacific Electric Railway near Los Angeles, July 13, 1913. 7 pages, 1 illus. 5c.
- Manchester, N. Y. Report of accident on line of Lehigh Valley Railroad near Manchester, Aug. 25, 1911. 16 pages, illus. 20c.
- Montz, La. Report of accident on Yazoo and Mississippi Valley Railroad near Montz, Nov. 12, 1912. 8 pages. 5c.
- North Haven, Conn. In re investigation of accident on New York, New Haven & Hartford Railroad near North Haven, Sept. 2, 1913; report of commission. 36 pages. 5c.
- Oakwood, Wis. Investigation of accident on Chicago, Milwaukee & St. Paul Railway at Oakwood, Feb. 9, 1915. 16 pages, illus. 5c.
- Oakwood, Wis. Report of accident on the Chicago, Milwaukee & St. Paul Railway at Oakwood, Jan. 30, 1915. 28 pages, illus. 10c.
- Odessa, Minn. Investigation of accident on Chicago, Milwaukee & St. Paul Railway at Odessa, Dec. 18, 1911. 14 pages, illus. 10c.
- Orient, Ohio. Report of accident on Baltimore & Ohio Southwestern Railroad at Orient, Aug. 12, 1915. 12 pages, illus. 5c.
- Oyama, N. C. Report of accident on Southern Railway near Oyama, Mar. 31, 1913, accompanied by Report of engineer-physicist of Bureau of Standards covering his investigation of broken rail. 22 pages, illus. 5c.
- Rockledge, Tenn. Report of accident on Nashville, Chattanooga & St. Louis Railway near Rockledge, Dec. 23, 1915. 14 pages, illus. 5c.
- Rules governing monthly reports of railway accidents, effective July 1, 1915. 32 pages. 5c.
- San Antonio, Tex. Investigation of accident to Galveston, Harrisburg & San Antonio Railway locomotive No. 704 at San Antonio, Mar. 18, 1912. 9 pages, illus. 10c.
- Stamford, Conn. In re investigation of accident on New York, New Haven & Hartford Railroad at Stamford, June 12, 1913. 24 pages. 5c.
- Stockwell, Ind. Report regarding investigation of derailment on Cleveland, Cincinnati, Chicago & St. Louis Railway near Stockwell, Jan. 7, 1913, accompanied by Report of engineer-physicist of Bureau of Standards regarding investigation of broken tire. 24 pages, illus. 5c.



## ACCIDENTS—Continued.

- Talmage, Iowa. Report of accident on Chicago Great Western Railroad near Talmage, Feb. 22, 1915. 23 pages, illus. 10c.
- Terre Haute, Ind. Report of accident which occurred on Vandalia Railroad at Terre Haute, Jan. 8, 1913. 7 pages. 5c.
- Thurmont, Md. Investigation of accident on Western Maryland Railway near Thurmont, June 24, 1915. 8 pages. 5c.
- Tipton Ford, Mo. Report of accident on Kansas City Southern Railway near Tipton Ford, Aug. 5, 1914. 9 pages, illus. 5c.
- Tuxedo, N. C. Report of accident on Southern Railway near Tuxedo, N. C., Aug. 12, 1914. 16 pages, illus. 5c.
- Tyrone, Pa. Report of collision on Pennsylvania Railroad at Tyrone, Pa., July 30, 1913. 11 pages, illus. 5c.
- West Lebanon, Ind. Report of accident on Wabash Railroad near West Lebanon, Mar. 7, 1912, accompanied by Report of engineer-physicist of Bureau of Standards. 1912. 17 pages, illus. 5c.
- Westerly, R. I. Report of accident on New York, New Haven & Hartford Railroad near Westerly, Oct. 25, 1913 [accompanied by report of engineer-physicist of Bureau of Standards covering investigation of broken rail]. 32 pages, illus. 10c.
- Westport, Conn. In re investigation of accident on New York, New Haven & Hartford Railroad at Westport, Oct. 3, 1912; report of commission. 15 pages. 5c.
- Woodlyn, Pa. Report of accident on Baltimore & Ohio Railroad near Woodlyn, Sept. 19, 1914. 19 pages, illus. 5c.
- Yoncalla, Oreg. Investigation of accident to Oregon & California Railroad locomotive No. 2538 operated by Southern Pacific Company, 4 miles south of Yoncalla, Apr. 4, 1912. 4 pages. 5c.

ACCOUNTING BULLETINS. Nos. 1-5, 7, 8 are superseded by bulletins 9 and 10. Accounting Bulletin 6, Decisions upon questions arranged under classifications prescribed by the Interstate Commerce Commission for express companies, effective July 1, 1910, is out of print. A revision of this bulletin is in preparation, but it is not definitely known when it will appear. We will notify those who make application when it is ready for sale.

9. Decisions upon questions raised under uniform system of accounts for electric railways prescribed by Interstate Commerce Commission, effective July 1, 1915. 111 pages. 10c.
10. Interpretations of accounting classifications prescribed by Interstate Commerce Commission for steam roads, effective July 1, 1915. 5c.

ACCOUNTING PUBLICATIONS. See Employees—Express companies—Gas corporations—Mileage—Passes—Pipe lines—Sleeping car companies—Steam roads—Tariff Circulars—Telegraph and telephone—Water transportation.

ADVANCE IN RATES. See Official classification territory—Western rates.



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BAGGAGE. Regulations restricting shape of baggage, investigation and suspension docket 444; decided Feb. 16, 1915. Pages 266 to 269. (Interstate Commerce Opinion 2904.) 5c.

BILLS OF LADING. "Carmark amendment." This is part of the Act to regulate commerce, as amended. 10c.

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Report to accompany S. 19 relating to bills of lading in interstate and foreign commerce. 1916. 9 pages. (64th Cong., 1st sess., S. Rept. 149.) 5c.

BLOCK SIGNALS. Final report of Block Signal and Train Control Board, June 29, 1912 [with appendices A-C]. 54 pages, illus. 10c.

Tabulation of statistics pertaining to block signals, interlocking plants, and telegraph and telephone for transmission of train orders as used on railroads of United States, Jan. 1, 1915. 30 pages. 10c.

Statistics for 1911, 1912, 1913, and 1914 can be supplied.

BOILERS. See Locomotive boilers.

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**CLASSIFICATIONS.** See Cylinders—Employees—Mileage—Pipe lines—Sleeping car companies—Steam roads—Tariff Circulars—Water transportation.

**COAL AND OIL.** No. 869, in matter of relation of common carriers to coal and oil and transportation thereof; [decided] June 9, 1914; report of Commission to Senate and House of Representatives. 49 pages. 5c.

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**CONFERENCE RULINGS BULLETIN** 6. 1913. 153 pages. [Cancels and includes Conference rulings bulletin 5, Apr. 1, 1911.] 10c. Supplement 1 [Jan. 6, 1913, to May 28, 1914]. 18 pages. 5c. Supplement 2 [July 11, 1914-July 26, 1915]. 5 pages. 5c.

**CORPORATIONS.** See Gas corporations—Intercompany relationships.

**COTTONSEED PRODUCTS** to Port Arthur, Tex., investigation and suspension 665; decided Mar. 18, 1916. Pages 378 to 388. (Interstate Commerce Opinion 3486.) 5c.

**CYLINDERS,** Classification of, investigation and suspension 697; decided Feb. 15, 1916. Pages 198 to 200. (Interstate Commerce Opinion 3424.) 5c.

**DANGEROUS ARTICLES.** See Explosives.

**DECISIONS** [Reports, or Opinions]. The decisions listed below construe the Act to regulate commerce, Safety-appliances act, etc. The back-title on these volumes reads: "Interstate Commerce Commission Reports."

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Decisions [Opinions] of the Interstate Commerce Commission, advance sheets, issued at irregular intervals by the Commission. Subscription, for the sheets which make a volume, \$1.00.

These opinions are issued in advance sheets for the convenience of persons interested who do not wish to wait until the completion of a large volume. This is a distinct proposition, not affecting the sale of the bound volumes.

Annotations of Interstate Commerce Commission's Reports [vols. 1-31]. [1915.] 7 leaves. 5c.

These leaves are intended to be cut into small sections and pasted in the bound volumes.

Table of cases and opinions of Interstate Commerce Commission, decisions under original act and subsequent amendments, Apr. 1887-June 1913, [in] vols. 1-27. 168 pages. 15c.

Supplement No. 1 to Table of cases and opinions of Interstate Commerce Commission, June 1913 to July 1915, [in] vols. 28-35. 88 pages. 10c.

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Table of defendants in cases before Interstate Commerce Commission with reference to cases in [vols. 1 to 8] to which they are parties. 40 pages. 5c.

DEMURRAGE. National car demurrage rules and explanations, Jan. 1916. 13 pages. 5c.

DETROIT RECONSIGNING CASE, investigation and suspension 144; decided Dec. 18, 1915. Pages 274 to 282. (Interstate Commerce Opinion 3270.) 5c.

DISTRICT OF COLUMBIA. See Gas corporations.

DRAWBARS. Order [promulgated] at general session of Interstate Commerce Commission of Oct. 10, 1910, in re standard height of drawbars. 2 pages. 5c.

**ELECTRIC RAILWAY COMPANIES.** Regulations to govern destruction of records, effective May 1, 1913. 1st issue. 16 pages. 5c.

Uniform system of accounts for electric railways, effective July 1, 1914 [with index]. 134 pages. 15c.

Same, amendment to sec. 1, paragraph 4. July 19, 1915. 1 page. 5c.

Same, Index, sold separately. 1915. Pages 107 to 134. 5c.

See also Accounting Bulletin 9.

**EMPLOYEES.** Act relating to liability of common carriers by railroad to their employees in certain cases. Approved Apr. 22, 1908. 2 pages. (60th Cong., 1st sess., Public act 100.) 5c.

Rules governing classification of steam railway employees and their compensation, effective July 1, 1915. 13 pages. 5c.

**EXPLOSIVES.** Notice to shippers in foreign countries who ship dangerous articles to United States. [1912.] 8 leaves, illus. 10c.

Accompanying the pamphlet are facsimiles of the red, yellow, white, and green labels required to be used for shipment of different classes of inflammable, corrosive, or otherwise dangerous articles.

Regulations for transportation of explosives and other dangerous articles by freight and express and specifications for shipping containers, effective Oct. 1, 1914. 196 pages, illus. 20c.

**EXPRESS COMPANIES.** Annual report on statistics, 1909, 20c; 1910, 10c; 1911, 15c; 1912, 1913, 1914, each, 10c.

[Docket] No. 4198, in matter of express rates, practices, accounts and revenues. 1912. 379 to 541+cccxxviii pages, map. (Interstate Commerce Opinion 1967.) 40c.

Includes tables of rate scales prescribed as reasonable substitute for carriers' Table of graduated charges. The opinion listed next below does not contain the map which is in this issue.

[Docket] No. 4198, in matter of express rates, practices, accounts, and revenues [etc.] 1913. 131 to 153+1098 pages. (Interstate Commerce Opinion 2408.) Paper, \$1.50.

APPENDICES.—A, Uniform rules, receipt, and classification of express matter.—B, Directory of express stations.—C, Rate table 1, main block tariff.—D, Rate table 2, sub-block tariff.—E, Schedule of maximum 1st-class package rates.

Same, supplemental order No. 1. Nov. 4, 1913. 4 pages. 5c.

Order of Interstate Commerce Commission on June 10, 1912, in matter of legality of issuance of express franks. 1 page. 5c.

Regulations to govern destruction of records of express companies, effective July 1, 1915. 43 pages. [Supersedes and cancels order dated Apr. 8, 1912.] 5c.

Uniform system of accounts for express companies, effective July 1, 1914. 113 pages. 10c.

See also Tariff Circular 19a.

**FIVE PER CENT CASE.** See Official classification territory.

**FOURTH SECTION OF ACT TO REGULATE COMMERCE** [relating to rates for long and short hauls.] Order—

5. Switching charges. Mar. 20, 1911. [General Order 1.] 5c.

## 100 AMERICAN COMMERCE ASSOCIATION

### FOURTH SECTION. OF ACT TO REGULATE COMMERCE— Continued.

- 121. Commodity rates from producing to consuming points. July 25, 1911. (General Order 3.) 5c.
- 124, amended July 10, 1914. Commodity rates from eastern points of shipment which are higher to intermediate points than to Pacific coast terminals. 5c.
- 124, supplemental, Sept. 28, 1914, amending above as to Zone 2. 5c.
- 129. Commodity rates of express companies from producing to consuming points not applicable from or to intermediate points. July 25, 1911. (General Order 4.) 5c.
- 144. Changes in classification of articles which result in increase of discrimination. Aug. 28, 1911. (General Order 5.) 5c.
- 340. Fraction of a cent in through fare or rate made up of aggregate of intermediate fares or rates. Oct. 10, 1911. (General Order 6.) 5c.
- 383, as amended, Mar. 28, 1916. Information to be furnished in applications for relief from provisions of Fourth section. (General Order 7.) 5c.
- 445. Commodity rates from producing points to consuming points which are not applicable from or to intermediate points. Nov. 28, 1911. (General Order 8.) 5c.
- 488. Extending time to May 1, 1912, of Fourth Section Orders 121 and 445. (General Order 10.) 5c.
- 3700. In matter of permitting ordinary changes in rates pending action upon applications for relief from Fourth section. Feb. 3, 1914. (General Order 13.) 5c.

FRANKS. See Express Companies.

FREIGHT. In matter of transportation of freights by common carriers in cars not owned by said common carriers; orders, testimony, and statement of exhibits. 1904. 263 pages. 20c.

National code of rules governing weighing and reweighing of car-load freight, June 9, 1914. 8 pages. 5c.

See also Railways.

GAS CORPORATIONS. Uniform system of accounts for gas corporations and electric corporations in District of Columbia, in accordance with act approved Mar. 3, 1909. 1st issue. 90 pages. 10c.

HIDES to Boston, Mass., investigation and suspension 664; decided Feb. 29, 1916. Pages 194 to 196. (Interstate Commerce Opinion 3422.) 5c.

HOURS OF SERVICE. Decisions construing Federal hours of service act for railroad employees. 1912. 92 pages. 10c.

Hours-of-service law and administrative rulings and opinions thereon. 1914. 8 pages. 5c.

Statistical analysis of carriers' monthly hours of service reports covering all instances in which employees were on duty during fiscal



**HOURS OF SERVICE—Continued.**

year ending June 30, 1913, for longer periods than those provided by Federal hours of service act. 16 pages. 10c.

Same, for year ending June 30, 1914, with comparative summary covering 1913 and 1914. 25 pages. 10c.

See also Safety appliances.

**IMPORTS.** In matter of rates on imports and domestic traffic, Feb. 28, 1903, report of Interstate Commerce commission to Senate of United States. 1903. 34 pages. [Reprint of Senate doc. 207, 57th Cong., 2d sess.] 5c.

**INCOME.** Preliminary report on income account of railways in United States: 1892, 10c; 1893 to 1905, each, 5c; 1906 and 1907, each, 10c.

These reports were discontinued after 1907 and the information given in the Bulletin of Revenues and Expenses of Steam Roads, which was discontinued in 1914.

See also Steam roads.

**INDUSTRIAL RAILWAYS CASES,** [docket] No. 4181, in matter of allowances to short lines of railroads serving industries:

Opinion number—

2547. Decided Jan. 20, 1914. Pages 212 to 373 illus. maps. [From Interstate Commerce Reports, vol. 29.] 10c.

2793. Decided Nov. 2, 1914, supplemental report. 5c.

3085. 2d case, decided July 1, 1915. 5c.

3300. 2d case, Chicago, West Pullman & Southern R. R. Co., decided Dec. 23, 1915. 5c.

3316. 2d case, Indiana Northern Railway, decided Jan. 3, 1916. 5c.

3317. 2d case, Lorain & Southern R. R. Co., decided Dec. 23, 1915. 5c.

3333. 2d case, Chestnut Ridge Railway, decided Dec. 23, 1915. 5c.

3334. 2d case, Moshassuck Valley Railroad, decided Jan. 3, 1916. 5c.

3460. 2d case, Westport Stone Co. and Big Four Stone Co., decided Mar. 3, 1916. 5c.

See also Valuation Order 12.

**INTERCORPORATE RELATIONSHIPS** of railways in United States as of June 30, 1906. 516 pages, 4 plates, 2 tables. Cloth, 65c.

**INTERSTATE COMMERCE ACT.** Act to regulate commerce, as amended, also district court jurisdiction act, compulsory testimony act, immunity of witnesses act, Elkins act, expediting act, Clayton antitrust act, Government-aided railroad and telegraph act, Lake Erie and Ohio River ship canal act, parcel post act, safety appliances, monthly reports of accidents, medals of honor, hours of service, ash pan, transportation of explosives, boiler inspection, block signals, revised to Nov. 1, 1914. 141 pages. 10c.



## 102 AMERICAN COMMERCE ASSOCIATION

### INTERSTATE COMMERCE ACT—Continued.

Amendment to section 20 relating to bills of lading. Approved Mar. 4, 1915. 2 pages. (63d Cong. Public act 325.) 5c.

This act, known as the Cummins amendment, is also printed in Interstate Commerce Commission Opinion 2984, with the report of the Commission. This Opinion is also 5c.

Amendment to Boiler Inspection Act. See Locomotive boilers.

KNITTING-FACTORY PRODUCTS, rates on, investigation and suspension No. 128; decided Jan. 7, 1913; report and order. Pages 634 to 640. (Interstate Commerce Opinion 2116.) 5c.

LADING. See Bills of lading—Vessels.

LAKE AND RAIL RATE CANCELLATIONS, investigation and suspension 709; decided Mar. 1, 1916. Pages 201 and 202. (Interstate Commerce Opinion 3425.) 5c.

LIVE STOCK. Order of Interstate Commerce Commission, Jan. 30, 1915; in matter of alleged unreasonable rates and practices involved in transportation of live stock, packing-house products, and fresh meats from various southwestern points; and No. 4004, Corporation Commission of Oklahoma *vs.* Abilene & Southern Railway Company [et al.] 1915. 25 pages. 5c.

LOCOMOTIVE BOILERS. Act to promote safety of employees and travelers upon railroads by compelling common carriers to equip locomotives with safe and suitable boilers and appurtenances thereto. Approved Feb. 17, 1911. 4 pages. (61st Cong., 3d sess., Public act 383.) 5c.

Amendment to Boiler Inspection Act, providing for inspection of entire locomotive. Approved Mar. 4, 1915. 1 page. (63d Cong., Public act 318.) 5c.

Locomotive Boiler Inspection Division, Annual reports: 1912, 15c; 1913, 10c; 1914 and 1915, each, 15c.

Rules and instructions for inspection and testing of steam locomotives and tenders in accordance with act of March 4, 1915, amending act of Feb. 17, 1911; order of commission, Oct. 11, 1915. 29 pages, 14 illus. 10c.

Rules and instructions for inspection and testing of locomotive boilers and their appurtenances, [approved June 2, 1911, Sept. 12, 1912, and June 9, 1914, with order, blank forms, and text of law of Feb. 17, 1911]. 1915. 38 pages. Fabrikoid, 15c.

LONG AND SHORT HAULS. See Fourth section of act to regulate commerce.

LUMBER. Investigation and suspension No. 520, rates on lumber from southern points to Ohio River crossings and other points; decided July 12, 1915. Pages 652 to 707. (Interstate Commerce Opinion 3096.) 5c.

Supplemental report, Opinion 3157, decided Aug. 19, 1915, is not available in separate form in this office.

MAPS. See Valuation Orders 1, 5, 6.

**MILEAGE.** Classification of train-miles, locomotive miles, and car-miles for steam roads, effective July 1, 1914. 16 pages. 5c.

**MINNESOTA RATE CASES,** opinion of court. 1913. 56 pages. (63d Cong., 1st sess., S. Doc. 54.) 5c.

# **NATIONAL ASSOCIATION OF RAILWAY COMMISSIONERS.**

This consists of members of State railroad commissions and the Interstate Commerce Commission, and meets annually to discuss such questions as uniform classification, car efficiency, grade crossings, railroad taxes, trespassing on railways, and safety appliances. The Proceedings for 1912 were the last printed by the Interstate Commerce Commission. Later Proceedings are published and sold by the American Law Reporting Co., 115 Broadway, N. Y.

## **Proceedings of annual conventions [cloth bound]—**

1st, 1889. 152 pages. 20c.	13th, 1901. 89 pages. 20c.
2d, 1890. 156 pages. 20c.	14th, 1902. 61 pages. 20c.
3d, 1891. 160 pages. 20c.	15th, 1903. 97 pages. 20c.
4th, 1892. 208 pages. 20c.	16th, 1904. 138 pages. 20c.
5th, 1893. 103 pages. 20c.	17th, 1905. 142 pages. 25c.
6th, 1894. 78 pages. 20c.	18th, 1906. 148 pages. 40c.
7th, 1895. 80 pages. 20c.	19th, 1907. 270 pages, 7 tables.
8th, 1896. 137 pages. 20c.	50c.
9th, 1897. 114 pages. 20c.	20th, 1908. 274 pages. 55c.
10th, 1898. 102 pages. 20c.	21st, 1909. 485 pages. 50c.
11th, 1899. 186 pages. 20c.	22d, 1910. 256 pages. 40c.
12th, 1900. 128 pages. 20c.	23d, 1911. 266 pages. 40c.

**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD,** No. 6569, in re financial transactions; report of commission to Senate, July 11, 1914. Pages 32 to 132. (Interstate Commerce Opinion 2708.) 10c.

**OFFICIAL CLASSIFICATION TERRITORY,** Docket No. 5860, revenues of rail carriers, investigation and suspension No. 333, rate increases:

Brief of L. D. Brandeis, special counsel for Interstate Commerce Commission. 1914. 199 pages, 51 tables. 40c.

Circular of inquiry to railroads with blank forms for answers. Dec. 20, 1913. 25 pages, 59 folded leaves. Paper, \$1.00.

Amendment and explanation of Circular of Dec. 20, 1913. 4 pages. 5c.

[Circular requesting information concerning special services rendered by railroads to shippers.] 1914. 7 pages. 5c.

Five per cent case, decided July 29, 1914. Pages 350 to 454, map, diagrams. (Interstate Commerce Opinion 2741.) 5c.

Five per cent case, decided Dec. 16, 1914. Pages 325 to 354, diagrams. (Interstate Commerce Opinion 2828.) 5c.

Five per cent case, hearings before Interstate Commerce Commission, with index. 1915. 8 vols., 6949 pages. (63d Cong., 2d sess., S. Doc. 466.) Paper, vol. 1, 55c; vol. 2, 90c; vol. 3, \$1.10; vol. 4, 50c; vol. 5, 45c; vol. 6, 60c; vol. 7, 45c; vol. 8, 10c.

Five per cent case, order Jan. 4, 1915. 18 pages. 5c.

## 104 AMERICAN COMMERCE ASSOCIATION

OIL. See Coal and oil.

OPINIONS. See Decisions.

PASSES. Regulations to govern issuing and recording of passes of steam roads, effective Jan. 1, 1912. 1st issue. 26 pages. 5c.

Same, amendment to take effect Apr. 1, 1912. 2 pages. 5c.

Same, amendment to take effect June 1, 1912. 1 page. 5c.

Same, amendment to take effect July 1, 1915. 2 pages. 5c.

PIPE LINES. Classification of investment in pipe lines, pipe line operating revenues and pipe line operating expenses of carriers by pipe lines, effective Jan. 1, 1915. 42 pages. 5c.

Regulations to govern destruction of records of carriers by pipe lines, effective July 1, 1915. 36 pages. 5c.

POOLING. Letters from Interstate Commerce Commission regarding Patterson and Foraker pooling bills. 1897. 5 pages. 5c.

RAILWAYS in United States in 1902. (Interstate Commerce Commission, 16th Annual report, appendix G.)

Pt. 2. Forty-year review of changes in freight tariffs. 2d edition. 207 pages. Cloth, 50c.

Pt. 4. State regulation of railways. 415 pages. Cloth, 70c.

Pt. 5. State taxation of railways and other transportation agencies. 462 pages. Cloth, 70c.

Pts. 1 and 3 never published.

See also Income—National Association of Railway Commissioners—Statistics—Steam roads—Valuation of railroads—Valuation Orders.

RATES. In matter of legal rates, duty of carriers and shippers to observe tariffs, relief under act to regulate commerce, memorandum. Reprint 1913. 5 pages. 5c.

Speech of Charles H. Dillon of S. Dak., in House, June 9, 1914. (In Cong. Record, vol. 51, No. 150, pages 10907 to 10912.) 8c.

In favor of a bill to secure cooperation between the Interstate Commerce Commission and State railway boards and commissions in correlating, changing, and establishing intrastate rates, charges, and fares.

REPORTS. See Annual reports—Decisions.

RULES OF PRACTICE before Interstate Commerce Commission in cases and proceedings under act to regulate commerce, revised, amended, and adopted Mar. 20, 1916. 24 pages. 5c.

SAFETY APPLIANCES. Classification of safety appliance defects to be reported by Federal inspectors. 1911. 14 pages, 1 illus. 5c.

Digest of decisions, including dicta, under Federal safety appliance and hours of service acts. Mar. 2, 1893, as amended Apr. 1, 1896, Mar. 2, 1903, Apr. 14, 1910, Mar. 4, 1907, with references to or excerpts from additional cases in which acts have been construed, orders and administrative rulings of Interstate Commerce Commission; by O. B. Kent. 1915. 281 pages. Buckram, 50c.

Report of chief of Division of Safety, and extracts from annual report of Interstate Commerce Commission, pertaining to safety

## SAFETY APPLIANCES—Continued.

appliances, locomotive ash pans, hours of service, investigation of accidents, and investigation of safety devices: 1911, 1913, 1914, and 1915, each, 5c.

Safety appliance acts. 1912. 11 pages. 5c.

United States safety-appliance standards; order of commission, Mar. 13, 1911. 37 pages, illus. 5c.

Plates illustrating United States safety appliance standards. 1911. 1 page, 16 plates. 10c.

ST. LOUIS & SAN FRANCISCO RAILROAD. No. 5933, report of investigation of St. Louis & San Francisco Railroad, Chicago & Eastern Illinois Railroad, and St. Louis, Brownsville & Mexico Railway. 1914. 80 pages. 10c.

SAND AND GRAVEL RATES, Central Freight Association investigation and suspension 631; decided Mar. 1, 1916. Pages 196 and 197. (Interstate Commerce Opinion 3423.) 5c.

SIGNAL BRANCH OF ENGINEERING SECTION of Interstate Commerce Commission, Instructions for field work. 1st tentative draft. 1916. 10 pages. 5c.

SLEEPING CAR COMPANIES. Classification of revenues and expenses of auxiliary operations and of other properties, effective July 1, 1912. 1st revised issue. 41 pages. 5c.

Order of June 8, 1911, in matter of destruction of records of sleeping car companies, effective Oct. 1, 1911, superseding order, June 10, 1910. vi pages. 5c.

Same, modified, to take effect Aug. 1, 1915. 2 pages. 5c.

## STATISTICS.

Preliminary abstract of statistics of common carriers—

1911. 55 pages. 10c.

1912. 171 pages. 30c.

1913. 179 pages. 25c.

1914. 187 pages. 25c.

1915. 230 pages. 35c.

Statistics of railways in United States, Annual report [cloth bound]—

1st, 1888. 390 pages. 35c.

2d, 1889. 566 pages. 45c.

3d, 1890. 983 pages, map. 75c

4th, 1891. 655 pages, map. 50c.

5th, 1892. 612 pages, map. 50c.

6th, 1893. 620 pages, map. 50c.

7th, 1894. 677 pages, map. 60c.

8th, 1895. 697 pages, map. 60c.

9th, 1896. 709 pages, map. 60c.

10th, 1897. 687 pages, map. 60c.

11th, 1898. 692 pages, map. 60c.

12th, 1899. 712 pages, map. 60c.

13th, 1900. 690 pages, map. 60c.

14th, 1901. 694 pages, map. 60c.

15th, 1902. 701 pages, map. 60c.

16th, 1903. 711 pages, map. 75c.

17th, 1904. 709 pages, map. 60c.

18th, 1905. 728 pages, map. 75c.

19th, 1906. 766 pages, map. 70c.

20th, 1907. 789 pages, map. 80c.

21st, 1908. 999 pages, map. 85c.

22d, 1909. 978 pages, map. 80c.

23d, 1910. 898 pages, map. 75c.

24th, 1911. 763 pages. \$1.00.

25th, 1912. 719 pages. \$1.00.

26th, 1913. 751 pages. \$1.00.

27th, 1914. 785 pages. \$1.00.

STEAM ROADS. Classification of income, profit and loss and general balance sheet accounts for steam roads, effective July 1, 1914. 60 pages. 10c.

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### STEAM ROADS—Continued.

Classification of investment in road and equipment of steam roads, effective July 1, 1914. 39 pages. 5c.

Same, amendment to sec. 2, paragraph 2. July 19, 1915. 1 page. 5c.

Classification of operating revenues and expenses of steam roads, effective July 1, 1914. 104 pages. 10c.

Same, index. Pages 105 to 297. 15c.

Condensed classification of operating expenses of steam roads, effective July 1, 1914. 18 pages. 5c.

Regulations to govern destruction of records of steam roads, effective July 1, 1914. 46 pages. [Supersedes orders dated June 10, 1910, June 8, 1911, and Oct. 7, 1912.] 10c.

Same, supplement to take effect, July 1, 1915. 1 page. 5c.

Rules governing monthly reports of railway accidents, effective July 1, 1915. 32 pages. 5c.

Rules governing separation of operating expenses between freight service and passenger service on large steam railways, effective July 1, 1915. 13 pages. 5c.

See also Accounting Bulletin 10—Employees—Mileage—Passes—Railways.

**STORAGE.** Code of storage rules, May 5, 1914. 8 pages. 5c.

**TAP LINE CASE,** investigation and suspension docket 11:

Opinion number—

1853. Decided Apr. 23, 1912. 5c.

1898. Decided May 14, 1912, supplemental report. 5c.

2749. Decided July 29, 1914, 2d supplemental report. 5c.

3014. Decided Apr. 27, 1915, 3d supplemental report. 5c.

3135. Decided July 26, 1915, 4th supplemental report. 5c.

Order, amended Oct. 30, 1912. 5c.

See also Industrial railways case.

**TARIFF CIRCULARS.** These circulars and their supplements are issued at frequent intervals and the last one published usually supersedes previous issues. The following are in force at the time of the publication of this Price List (April, 1916)—

18a. Regulations to govern construction and filing of freight tariffs and classifications and passenger fare schedules, administrative rulings, effective Mar. 31, 1911. 10c.

18a, supplement 3. Feb. 4, 1913. 5c.

18a, supplement 4. Jan. 12, 1914. 5c.

19a. Regulations to govern construction and filing of tariffs and classifications of express companies, administrative rulings; revised Mar. 31, 1911. 5c.

19a, supplement 1. Effective Mar. 1, 1912. 5c.

**TARIFFS.** [Order] of Commission, Oct. 12, 1915, in matter of modification of provisions of sec. 6 of act with regard to posting freight or passenger tariffs at stations. 4 pages. 5c.

**TELEGRAPH AND TELEPHONE.** Instructions for field work of telegraph and telephone section of Division of Valuation. 1915. 31 pages. 5c.



## TELEGRAPH AND TELEPHONE—Continued.

Regulations to govern destruction of records of telephone, telegraph, and cable companies, including wireless companies, effective Feb. 1, 1914. 31 pages. [Supersedes order dated May 13, 1912.] 5c.

Uniform system of accounts for telegraph and cable companies, exclusive of wireless telegraph companies, effective Jan. 1, 1914. 1st issue. 82 pages. 10c.

Uniform system of accounts for telephone companies—

Class A and B, effective Jan. 1, 1913. 79 pages. 10c.

Same, supplement, effective Jan. 1, 1915. 7 pages. 5c.

Class C, effective Jan. 1, 1915. 44 pages, plates. 10c.

Class A includes companies having average operating revenues exceeding \$250,000; class B, companies having operating revenues of from \$50,000 to \$250,000; and class C, companies with operating revenues exceeding \$10,000 and less than \$50,000.

See also Block-signals—Valuation Orders 17 and 19.

TRAIN CONTROL. Report of test of automatic train control system of American Train Control Company, Baltimore, Md. 1915. 27 pages, illus. 63d Cong., 3d sess., H. Doc. 1541.) 10c.

TRAIN DELAY REPORTS. Instructions relative to. 1912. 1 page. 5c.

Order of June 10, 1912, in matter of train delay reports [accompanied by blank form]. 1 page. 5c.

TRANSIT CASE, [docket] No. 3002, in matter of investigation into substitution of tonnage at transit point; [decided Feb. 10, 1913; 3d supplemental and final report and order of commission]. Pages 204 to 210. (Interstate Commerce Opinion 2188.) 5c.

UNREPORTED OPINIONS, reparation, vol. 16, Nos. 1817 to 1950, briefed in vol. 34 of reports and decisions of Interstate Commerce Commission [title-page, table of cases, etc., and index]. 1915. 70 pages. 10c.

Same, vol. 17, Nos. 1951 to 2100. 1915. 65 pages. 10c.

## VALUATION OF RAILROADS.

Instructions for field work of mechanical and electrical sections of Division of Valuation. 1915. 22 pages. 5c.

Instructions for field work of mechanical department of Interstate Commerce Commission. 1st tentative draft. 1914. 17 pages. 5c.

Instructions for field work of roadway and track department of Interstate Commerce Commission. 2d tentative draft. 1914. 18 pages. 5c.

Preliminary work by carriers. [1914.] 3 pages. (Valuation Circular 1.) 5c.

See also Telegraph and telephone.

## VALUATION ORDER—

1. Specifications for maps and profiles as prescribed by Interstate Commerce Commission, effective Feb. 1, 1914. 1st issue. 23 pages, 1 illus., maps. 15c.



## VALUATION ORDER—Continued.

2. Superseded by order No. 10.
3. Regulations to govern recording and reporting of all extensions and improvements or other changes in physical property of every common carrier, effective July 1, 1914. 8 pages. 5c.
4. Inventory of materials and supplies, order of Commission, June 25, 1914. 1 page. 5c
5. Modifying and supplemental order [of Valuation Order 1, Specifications for maps and profiles]. 1914. 1 page. 5c.
6. Regulations modifying and supplementing Valuation Order 1. 1914. 5 pages. 5c.
7. Order, instructions, and forms pertaining to schedules of land. 1914. 8 pages+2 sheets. 5c.
8. Regulations and sample forms to govern recording and reporting of register of equipment and original cost to date by common carriers, effective Nov. 21, 1914. 1st issue. 1 page. [27] folded leaves. 30c.
9. Relates to Valuation Division affairs. Not for distribution.
10. Abandoned property, modifying and supplemental order, Dec. 23, 1914. 1 page. 5c.
11. Order, instructions, and form pertaining to inventory of records, Jan 21, 1915. 8 pages, 1 folded leaf. 5c.
12. Order of Interstate Commerce Commission, Jan. 21, 1915, industrial tracks. 1 page, 1 folded leaf. 5c.
13. Order of Interstate Commerce Commission, Feb. 9, 1915, schedules made by carriers. 2 pages. 5c.
14. Order, instructions, and forms pertaining to purchases of materials, prices paid, and rates of compensation paid for labor, effective Feb. 9, 1915. 3 pages, [87] folded leaves. 40c.
15. Order, instructions, and form pertaining to privileges given and leases made by steam railroads, Mar. 8, 1915. 5 pages, 1 folded leaf. 5c.
16. Order and instructions pertaining to aids, gifts, grants, and donations, Mar. 30, 1915. 4 pages. 5c.
17. Order, instructions, and forms pertaining to purchases of materials, prices paid, and rates of compensation paid for labor, to be filed by telegraph companies, effective May 5, 1915. 6 pages [71] folded leaves. 35c.
19. Order, instructions, and forms relating to purchases of materials, prices paid, and rates of compensation paid for labor, pertaining to telegraph and telephone property to be filed with Interstate Commerce Commission by steam railway common carriers, effective May 5, 1915. [5] pages, [35] folded leaves. 20c.
20. Order of Interstate Commerce Commission, May 13, 1915, corporate history [of steam railroads]. 2 pages and folded plate. 15c.

VESSELS. Act to provide for lading or unlading of vessels at night, preliminary entry of vessels, and for other purposes. Approved Feb. 13, 1911. 2 pages. (61st Cong., Public act 350.) 5c.

## WATER TRANSPORTATION.

Classification of expenditures for real property and equipment of carriers by water, effective Jan. 1, 1913. 1st issue. 1912. 15 pages. 5c.

Same, amendment to sec. 13. July 19, 1915. 1 page. 5c.

Classification of income and profit and loss accounts for carriers by water, effective July 1, 1913. 1st issue. 1913. 22 pages. 5c.

Classification of operating expenses of carriers by water, effective Jan. 1, 1911. 1st issue. 37 pages. 5c.

Classification of operating revenues of carriers by water, effective Jan. 1, 1911. 15 pages. 5c.

Form of general balance sheet statement for carriers by water as prescribed by Interstate Commerce Commission, effective Jan. 1, 1913. 1st issue. 1912. 29 pages. 5c.

Regulations to govern destruction of records of carriers by water, effective July 1, 1913. 1st issue. 19 pages. 5c.

**WESTERN RATES.** Western classification territory, pt. 3, rate increases, investigation and suspension 655; decided Feb. 8, 1916. Pages 94 to 97. (Interstate Commerce Opinion 3402.) 5c.

Western passenger fares, increases, investigation and suspension docket 600; decided Dec. 7, 1915, [report and order of commission]. 70 pages, illus. (Interstate Commerce Opinion 3239.) 10c.

1915 western rate advance case, investigation and suspension docket No. 555, rate increases in western classification territory; decided July 30, 1915. Pages 497 to 681. (Interstate Commerce Opinion 3139.) 15c.

These documents may be procured from the

SUPERINTENDENT OF PUBLIC DOCUMENTS,

Washington, D. C.,

at and for the prices indicated at the end of each document description.

## § 26. Distribution of Official Circulars and Rulings of the Commission.

It is obviously impracticable for the Commission to place copies of official circulars and rulings in the hands of all the officers of carriers or to furnish copies for distribution among them, or the general public. The officers at the head of traffic departments, or in charge of the passenger and freight departments, respectively, will designate for each road one official in the passenger department and one in the freight department (unless both are under one head officer and one appointment is considered sufficient), to

whom such circulars and rulings are to be sent; and arrange for such designated officials to disseminate the information among other interested officers and agents.

With a view of giving prompt information to those who may be interested, the Commission will upon application place upon its mailing list regularly organized boards of trade, chambers of commerce, commercial clubs, and shippers' associations, for the purpose of mailing to them copies of official circulars containing rulings and orders of the Commission.

I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 211.

The general distribution of the Commission's circulars, rulings, reports, publications, etc., is accomplished through the Superintendent of Public Documents, Washington, D. C., who makes a nominal charge therefor. These publications are classified and listed, which list may be procured from the Superintendent of Public Documents upon request.

#### **§ 27. Quotations from Correspondence of the Commission.**

The Commission requests that if extracts from its correspondence are set out by carriers, such extracts be made sufficiently full, or that sufficient of the correspondence be presented, to give a complete view and understanding of the meaning of the ruling and of the circumstances discussed, or of the inquiry answered therein.

I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 29.

#### **§ 28. Powers and Duties of the Interstate Commerce Commission as Amplified in its Publications; Reference Paragraph.**

The numerous powers and duties of the Interstate Commerce Commission relating to its administration of

the regulatory acts will be found under specific headings in the following volumes:

"The Interstate Commerce Law.—Abridged," Parts 1, 2 and 3, *ante*.

"Practice and Procedure Before Interstate Commerce Commission," *post*.



### CHAPTER III.

#### PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION.

##### § 1. Interstate Commerce Commission—a "Shippers' Forum" Rather Than a "Lawyers' Court."

- (1) Election of Remedies by Damaged Persons.
- (2) Limitations of Actions Before Commission.
- (3) Machinery of Interstate Commerce Commission for Investigation of Rates, Classifications, Regulations, and Practices of Carriers may be set in motion by Complaint filed by Shipper or upon the Commission's Own Initiative.
- (4) Synoptical Outlines of Procedure in Formal Proceedings Before the Commission.





### CHAPTER III.

#### PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION.

##### § 1. Interstate Commerce Commission — a “Shippers’ Forum” Rather Than a “Lawyers’ Court.”

The strict rules of procedure and the necessity of appearance by attorney in the law courts render the administration, as well as the quality, of justice by them frequently misunderstood and unappreciated by the persons who have recourse thereto for the enforcement of their legal rights.

The adjustment of the rights of shippers and carriers by the Interstate Commerce Commission is a long step toward a much-desired end—certainty and equality, untrammelled and free of political coercion, in the administration of the rights of the people and a public agent. Too much credit cannot be given the Commission for its conscientious, impartial and equitable enforcement of the law and its constant purpose to hold itself a forum in which freedom of action, exact and impartial justice are sought and sustained. This spirit prevails in the language of the Act to Regulate Commerce.

Section 17 of the Act provides that “any party may appear before said Commission and be heard in person or by attorney.” In furtherance of this authority and policy of the law, the Commission has become a “shippers’ forum” where not only is the shipper himself heard, but legal and other assistance is afforded him to develop his case along the necessary technical lines to give it effect, as contradistinguished from a “lawyers’ court” replete with technical, evasive and oftentimes pernicious practices; nor is

the machinery of the Commission retarded by the vexatious delays and justice-diverting forms of procedure common to the operation of our general law courts.

The spirit of the Act and the view of the Commission are that dilatory proceedings are objectionable and that speedy hearings are to be desired. "It is intended that all its proceedings shall be in the simplest form consistent with a reasonable degree of certainty," it was said by the Commission in **Re Procedure in Cases at Issue**, 1 I. C. C. Rep. 223. The proceedings before the Commission, in practically all cases consist of a complaint and an answer. Federal equity rules of pleadings, stripped of all technicalities, would subserve the procedure before the Commission, but the Commission in its wisdom, has seen fit to promulgate such rules of practice and pleading as it believes will best conserve the speedy and effective administration of its functions, and bring into effect the intent and purpose of the regulatory legislation.

These rules of practice and procedure before the Commission will be found in full in the appendix to this volume.

(1) **Election of Remedies by Damaged Persons.** The Supreme Court of the United States has said that it "inevitably follows from the context of the Act that the independent right of an individual to maintain actions, in courts to obtain pecuniary redress for violations of the Act conferred by the ninth section, must be confined to redress of such wrongs as can, consistently with the context of the Act, be redressed by courts without previous action by the Commission.

*T. & P. Ry. Co. vs. Abilene Cotton Oil Co.*, 204 U. S. 426.

If a carrier violates any of the provisions of the Act, it is "liable to the person or persons injured thereby for the full amount of damages sustained in consequences of any

such violation." The Act then proceeds in the ninth section to provide that any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt.

There is no express prohibition against a state court exercising jurisdiction to be found in the language of the Act to Regulate Commerce but it is not consonant with some of the procedure provided, for the jurisdiction of the state courts to lie. In fact, there is in the entire Act, but one specific provision for the jurisdiction of the court to obtain, and that is by the amendment of June 18, 1910, to the sixteenth section, permitting suits to be filed on awards of damage, made by the Commission, either in a federal court or in any state court of general jurisdiction having jurisdiction of the parties.

It is settled that a state court may enforce a law of Congress, but in the case of the special legislation directed to the regulation of transportation, the machinery for its enforcement is provided in the same legislation, and it is clear from the language of the court in the Abilene case, *supra*, that where election of remedies is afforded the aggrieved shipper, he may only proceed in the courts designated in the statute when his action does not require prior action by the Commission. To this extent only has the damaged person an election of remedies.

Therefore, in the language of the statute, a damaged person may make complaint to the Commission, or institute suit in any circuit court of the United States of competent jurisdiction, but such person shall not have the right to pursue both of such remedies, and must elect in each case which one of the two methods of procedure he will adopt. If he elects to proceed before the Commission, the latter is empowered to hear the case, and if the Commission determines that the petitioner is entitled to such damages, the Commission may make an order directing the carrier to pay to the complainant the sum which he is entitled to within a time fixed by the Commission. Upon the failure of the carrier to comply with such order of the Commission, the person for whose benefit the order was made may file in the circuit court of the United States for the district in which he resides, or in which is located the principal operating office of the carrier, or through which the road of the carriers run, or in any state court of general jurisdiction, having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises, and while in all other respects such suit in such courts shall proceed like other civil suits for damages, the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated, and the petitioner shall not be liable for the costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal.

We parallel the conditions which will surround the prosecution of such elective actions before the Commission and in the courts, for in one instance the Commission might be the more desirable forum, and again the courts might be preferable:

## BEFORE COMMISSION

Procedure is less formal.  
Expert traffic knowledge of Commission is valuable.  
Substitution or addition of parties permitted, and causes no injury.  
Commission without authority to grant injunction.  
Limitation of 2 years.  
No limit as to amount involved.  
No costs assessed.  
More liberal construction of Act.  
Much speedier determination of case.

## ACTION IN COURTS

Strict rules of pleading and evidence.  
Will jury trial be disadvantageous?  
Suit might abate for want to proper parties.  
Nature of remedy which court can enforce.  
Court can issue injunction in case of necessity.  
Limitation by state statute.  
Amount involved must be \$2,000 to invoke jurisdiction of Federal Courts.  
Costs assessed against one of parties.  
Liberal construction of Act.  
Subject to procedure in pleadings and hearing.

It is, therefore, apparent that in cases of this nature the party contemplating suit should weigh the reasons carefully in making his selection of forum in which he is going to proceed. He must consider whether or not the carrier would obey the order of the Commission awarding him damages, for in the event of the carrier failing to comply with the Commission's order, he must then proceed in court as provided for in section 16 of the Act, for the enforcement of such order. If he proceeds in court in the first instance, the judgment of the court is binding. It is worthy of comment that since the amendment of the Act in 1906, the carriers have generally paid awards of



damages rendered by the Commission without further contest.

Act to Regulate Commerce, sections 8, 9 and 16.

See also:

Philips Co. vs. G. T. W. R. R. Co., 236 U. S. 662.  
 Mitchell Coal and Coke Co. vs. Penn. R. R. Co., 230 U. S. 247.  
 Penn. R. R. Co. vs. International Coal Mining Co., 230 U. S. 184.  
 U. S. vs. Pacific & A. Ry. & Nav. Co., 228 U. S. 87.  
 Robinson vs. B. & O. R. R. Co., 222 U. S. 506.

Compare:

Baer Bros. Merc. Co. vs. M. P. Ry. Co., 17 I. C. C. Rep. 225.

(2) **Limitations of Actions Before Commission.** Sec. 16 of the Act provides that "all complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court or state court within one year from the date of the order, and not after."

In the amendment of June 29, 1906, claims for damages which accrued prior thereto, were accorded one year for presentation, but the amendment of 1910 struck this proviso from the statute. The amendment of 1906 took effect August 28, 1906, and after August 28, 1907, all such claims were barred.

In U. S. vs. Stand. Oil Co., 148 Fed. Rep. 719, it was held the Act took effect June 29, 1906, and resolution of postment by Congress without effect.

The limitation imposed by Section 16, *supra*, is now general, and not confined to claims for reparation only. Where the action on such a claim is begun before the Commission and prosecuted in court on the Commission's order, the filing of the petition in the proceeding before the Com-

mission is the beginning of the suit before the court, and the subsequent proceedings in court are a continuation of such action in the suit before the Commission.

M. & K. S. Ass'n. vs. A. T. & S. F. Ry. Co., 13 I. C. C. Rep. 411.

Where the damaged person elects to proceed in court in the first instance, the federal and state courts will be governed by the statutes of limitation of the state in which jurisdiction accrues, and the two year limitation of the Act will have no bearing upon such court actions.

The Commission holds that, under the limitation enacted into the Act, it should be guided by the same general principles under which statutes of limitation are applied to actions brought in courts of justice. And the universal rule of the courts is that statutes of limitation do not cease to run against the demand until a complaint has been filed pleading a definite cause of action. Section 13 of the Act permits a voluntary association of shippers to attack existing rates on behalf of its members, on general grounds of convenience, and such association of its members, on general grounds of convenience, may also ask reparation on previous shipments made by them under the rate attacked. The Commission has said that "it is clear that no demand for damages by such an association should be entertained now that a period of limitation has been incorporated in the Act, or can it be said to state a complaint or cause of action as to stop the running of the limitation, that does not definitely name the member or members on whose behalf the claim for reparation is made" (1) \* \* \* It is clear, then, that any complaint under which an award of damages is sought by a voluntary association \* \* \*, which can make no claim on its own behalf, must be filed on behalf of a definitely named party in interest. \* \* \*

The distinction between a mere form of action and the essential nature of a cause of action must not be overlooked. The form of action is usually provided by statute; the cause of action ordinarily arises through some act or omission of the parties. And all the elements fairly necessary to present the cause of action must be pleaded in a complaint filed with the Commission. This is made especially clear by the language of section 13, which requires the Commission, when a complaint has been filed, to forward to the defendant a statement of the charges thus made, and to call upon it "to satisfy the complaint or answer the same in writing within a reasonable time." And therefore unless the complaint brought by a voluntary association definitely names those of its members on whose behalf reparation is demanded, and describes the shipments on which reparation is claimed with sufficient particularity to enable the Commission to forward a statement of the charges to the defendant and to call upon it to satisfy the claim or answer in writing, it is clear that a cause of action has not been stated in the form and manner required by the law or in such manner as to stop the running of the period of limitation provided in section 16."

M. & K. S. Ass'n. vs. A. T. & S. F. Ry. Co., 13 I. C. C. Rep. 411.

The position of the Commission brooks no question. Their language is emphatic of their purpose to require claim for reparation to be made in the name of the claimant and that each shipment involved shall be specifically described.

Where an association files complaint demanding reparation under general averments, but does not name the members of the association on whose behalf the complaint is filed, nor specify and describe the shipments in issue with

reasonable particularity, such filing of complaint does not operate to stop the running of the statute of limitations.

M. & K. S. Ass'n. vs. A. T. & S. F. Ry. Co., 13 I. C. C. Rep. 411.

See also:

Anaconda Copper Mining Co. vs. C. & E. R. R. Co., 19 I. C. C. Rep. 592, 594.

Acme Cement Plaster Co. vs. St. Louis & S. F. R. R. Co., 18 I. C. C. Rep. 376.

Beekman Lumber Co. vs. St. L. I. M. & S. Ry. Co., 15 I. C. C. Rep. 274, 276.

Woodward & D. vs. L. & N. R. R. Co., 15 I. C. C. Rep. 170.

Venus vs. St. L. I. M. & S. Ry. Co., 15 I. C. C. Rep. 136, 137.

Hartman Furniture & Carpet Co. vs. Wisconsin Cent. Ry., 15 I. C. C. Rep. 530, 531.

Duluth Log Co. vs. Minnesota & Int. Ry. Co., 15 I. C. C. Rep. 627.

In re when a cause of action accrues, 15 I. C. C. Rep. 201.

Nicola, Stone & Meyers Co. vs. L. & N. R. R. Co., 14 I. C. C. Rep. 199, 206.

The statute does not apply when suits are brought primarily in a federal court.

Lyne vs. D. L. & W. R. R. Co., 170 Fed. Rep. 847.

For holdings prior to the amendment, when the law of the state in which the suit was brought, controlled as to limitation, see,

Cattle Raiser's Ass'n. vs. C. B. & Q. R. R. Co., 10 I. C. C. Rep. 83, 101.

Mich. Ins. Bank vs. Eldred, 130 U. S. 693.

Rattican vs. Term. R. R. Ass'n., 114 Fed. Rep. 666.

Murray vs. C. & N. W. Railroad Co., 92 Fed. Rep. 868.

Copp vs. L. & N. R. R. Co., 50 Fed. Rep. 164.

Cook vs. C. R. I. & P. Ry. Co., 81 Iowa 551.

Compare:

I. C. C. vs. Brimson, 154 U. S. 447, holding that section 12 of the Act to Regulate Commerce valid and upholding order of Commission requiring attendance of witnesses.

See also: "The Interstate Commerce Law," Part 3, Chap. X, "Damages,"—sec. 2, "when cause of action accrues."

**(3) Machinery of Interstate Commerce Commission for Investigation of Rates, Classifications, Regulations, and Practices of Carriers May be Set in Motion by Complaint Filed by Shipper or upon the Commission's Own Initiative.**

Since the scope of this work is primarily confined to the needs and purposes of shippers of freight, it will deal with the procedure and practice before the Commission from that standpoint alone.

It is provided in section 13 of the Act, as amended June 18, 1910, that any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such a common carrier who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded

by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complaint.

Act to Regulate Commerce, section 13.

By section 15 of the Act (as amended June 18, 1910) the Commission is authorized "whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, \* \* \* either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice, and pending such hearing and decision \* \* \* may suspend the operation of such \* \* \* rate, fare, charge, classification, regulation, or



practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing \* \* \* the Commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective."

This is not a permissive authority but a mandate of the statute, when taken in conjunction with the general duty of the Commission to enforce the provisions of the Act, that the Commission shall investigate upon its own motion, if complaint be not filed, such new individual or joint rate, fare, charge, classification, regulation, or practice for the purpose of determining whether the same violates the requirement of the Act that the carriers' classifications, rates, charges, regulations, and practices, shall be just and reasonable.

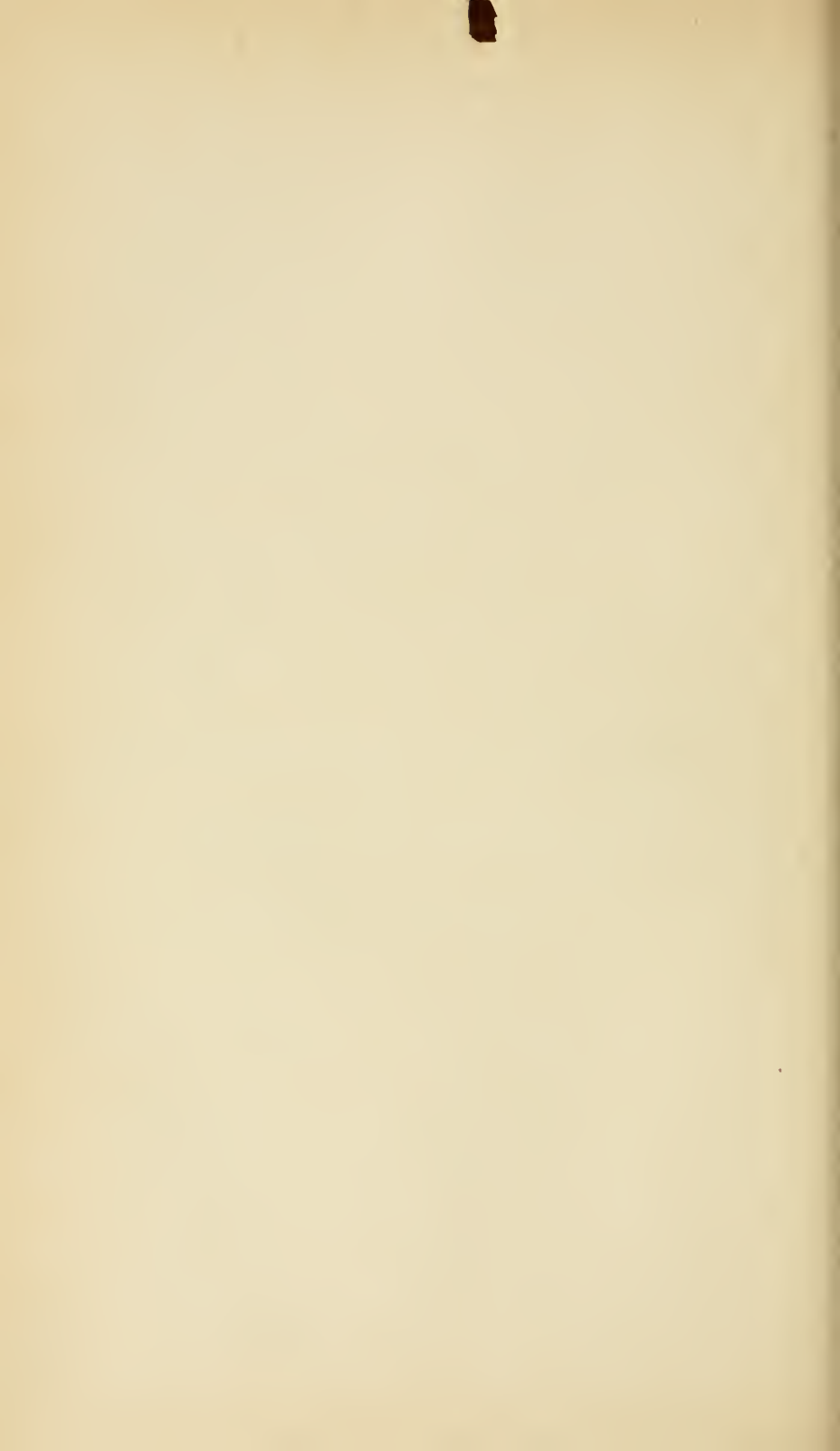
Where the Commission proceeds on its own initiative, it follows the procedure prescribed by it for the conduct of examinations and investigations authorized by section 12 of the Act and of public hearings. Such an inquiry may be prosecuted by the Commission at any point in the United States into any matter or question concerning the business and practices of any carrier subject to the Act.

Act to Regulate Commerce, sections 1, 15, and 19.

**(4) Synoptical Outlines of Procedure in Formal Proceedings Before the Commission.** The several steps in the procedure in formal cases before the Commission in many respect resemble the regular practice of the courts, and are as follows:

1. Filing of petition or complaint.

2. Notice and service on party complained of to either satisfy the complaint or appear and answer it.
3. Notice in form of Demurrer by defendant party, raising the sufficiency of allegations of complaint to constitute violation of the Act. (Of infrequent use.)
4. Filing of answer by defendant joining the issue or issues.
5. Issuance of subpoenas for attendance of witnesses, and for the taking of depositions, if necessary, upon the issues found by the answer.
6. Assignment of time and place for hearing of case.
7. Hearing of evidence by examination of sworn witnesses by parties in person or by attorney (inclusion of depositions, if any), and oral arguments, if any.
8. Filing of briefs by both parties in accordance with rules of Commission.
9. Case is considered by Commission. Upon conclusion being reached, a written report or opinion is handed down, filed with the Secretary.
10. Order is made by Commission in accordance with its report or opinion, and recorded by the Secretary.
11. Copy of such order, under Seal of Commission, is served upon both parties complainant and defendant.



## CHAPTER IV.

### PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION (Continued).

#### COMPLAINTS BEFORE THE COMMISSION.

- § 1. Formal Proceedings.
  - (1) Formal Complaints.
  - (2) General Requisites as to Contents of Formal Complaints.
- § 2. Who may be Parties to the Bringing of Complaints Before the Commission.
- § 3. Complainant need not be Free from Fault.
- § 4. Description of Parties—Complainants or Petitioners.
- § 5. Complaint by one Party on Behalf of Other Parties.
- § 6. New Parties.
- § 7. Copies of Complaints or Petitions.
- § 8. Pleading by Complainant of Anticipated Defense.
- § 9. Use of Technical Terms, Trade Names or Abbreviations in Pleadings.
- § 10. Pleading Facts Unknown to Complainant or Within the Knowledge of the Adverse Party.
- § 11. Pleading of Tariffs, Contracts, and Other Documents.
- § 12. Amending Complaints.
- § 13. Complainant's Case not Concluded by Allegations of his Complaint; Liberal Rule of the Commission.



## CHAPTER IV.

### PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION (Continued).

#### COMPLAINTS BEFORE THE COMMISSION.

##### § 1. Formal Proceedings.

(1) **Formal Complaints.** While the Commission does not enforce with technical precision its regulations prescribing the forms of pleadings in proceedings before it either formal or informal in their character, it is desirable, of course, that parties applying to the Commission for relief should proceed in an orderly and sufficient manner in such pleadings as they may file.

A formal complaint, addressed to the Interstate Commerce Commission resembles in character, a petition in equity to the courts and must be directed to an alleged violation of the provisions of the Act to Regulate Commerce or the acts supplemental thereto. Such a complaint may be made against any carrier or other person subject to the Act who perpetrates the violations of the Act.

The mandatory and prohibitory provisions of the Act are divisible into two general classes:

1. Those for the direct benefit of the users of transportation facilities, such as the requirement that rates shall be just and reasonable, and not unduly discriminatory; and
2. Those which are incidental to the first class, such as the keeping of accounts prescribed by the Commission, and the prohibition against keeping accounts other than those so prescribed.

Under section 13 of the Act, technically a complaint could be made alleging violations of the second class, but



ordinarily a shipper would not be directly interested in the accounting methods of a carrier.

The Act requires and prohibits certain acts by the carriers subject to it, and provides specific relief for violations thereof. Therefore a complaint brought for the benefit of the shipper must allege a violation of one or more of such provisions of the Act and ask the relief afforded therefor. Such complaints may be based upon one or more allegations of the following nature:

1. That rates are unreasonable and unjust *per se*.
2. That the carriers fail to make switch connections.
3. That unjust discrimination exists between persons.
4. That undue or unreasonable preference or advantage exists—as to persons, or localities, or particular traffic.
5. That the carrier fails to furnish facilities for the interchange of traffic.
6. That the long-and-short-haul clause is being violated.
7. That the application of the carriers seeking relief under section 4 operates in violation of the Act.
8. That the carrier fails to post tariffs.
9. That the provisions of the Act governing condition of carriage are being violated.
10. That the existing regulations and practices of the carrier are in violation of the Act.
11. That the carrier has failed to establish through routes and joint rates.
12. That a just and reasonable charge should be paid by the carrier for service preformed by the owner of the property to be transported.
13. That the carrier has failed to issue receipt or bill of lading in violation of the provisions of the Act.
14. That the carrier has violated any other provision of

the Act to regulate Commerce or of the Acts supplemental thereto or amendatory thereof.

Daish Proc. in I. C. Cases, section 73, p. 99, par. 6.  
 Daish Proc. in I. C. Cases, section 73, p. 100, par. 2.  
 "Per se," in this sense means "in and of themselves."  
 Act to Regulate Commerce, section 1.  
 Same, section 2; Same, section 3; Same, section 4;  
 Same, section 6.  
 Act to Regulate Commerce, section 7.  
 Same, section 15.  
 Same, section 20.

(2) **General Requisites as to Contents of Formal Complaints.** The Commission in connection with its rules of practice and procedure, prescribes the following caption form for formal complaints to be filed with it, and also directs its Secretary upon request, to advise any party as to the form of complaint, answer, or other necessary paper.

## COMPLAINT BEFORE THE INTERSTATE COMMERCE COMMISSION

<p>.....</p> <p style="text-align: center;">vs.</p> <p>The ..... Railroad Company</p> <p>..... Railway Company</p>	<p style="font-size: 4em;">}</p>	<p>(Insert corporate title, without abbreviation, of carrier, or carriers, necessary defendants.)</p>
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The complaint of the above-named complainant respectfully shows:

I. That (complainant should here state nature and place of business, also whether a corporation, firm, or partnership, and if a firm or partnership, the individual names of the parties composing the same).

II. That the defendant above named is a (are) common carrier engaged in the transportation of passengers and property, wholly by railroad (or, partly by railroad and partly by water), between points in the state of ..... and points in the state of ....., and as such common carrier is (are) subject to the provisions of the act to regulate com-

merce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III. That (state in this and subsequent paragraphs, to be numbered IV, V, etc., the matter or matters intended to be complained of, naming every rate, rule, regulation, or practice the lawfulness of which is challenged, and also each point of origin and point of destination between which the rates complained of are applied. Whenever practicable tariff references should be given.)

(Where discrimination is charged, the facts constituting the basis of the charge should be clearly stated; that is, if the discrimination be under section 2, the person or persons claimed to be favored and the person or persons claimed to be injured should be named, and the kind of service and kind of traffic, together with the claimed similarity of circumstances and conditions of transportation, should be set forth. If the discrimination be under section 3, the particular person, company, firm, corporation, locality, or traffic claimed to be accorded undue or unreasonable prejudice or disadvantage, should be stated. If the discrimination be under section 4, the particular provision of the section claimed to be violated—that is, whether the long-and-short-haul provision or the aggregate of intermediate rates provision—as well as the facts constituting such violation should be stated.)

X. That by reason of the facts stated in the foregoing paragraphs complainant has (have) been subjected to the payment of rates fares or charges) for transportation which were when exacted, and still are, (1) unjust and unreasonable in violation of section 1 of the act to regulate commerce, and (or) (2) unjustly discriminatory in violation of section 2, and (or) (3) unduly preferential or prejudicial in violation of section 3, and (or) (4) in violation of the long-and-short-haul (or, aggregate of intermediate rates) provision of section 4 thereof. (Use one or more of the allegations numbered 1, 2, 3, 4, according to the facts as intended to be charged.)

Wherefore complainant pray that defendant may be (severally) required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendant (and each of them) to cease and desist from the aforesaid violations of said act to regulate commerce, and establish and put in force and apply in future to the transportation of . . . . . between the origin and destination points named in paragraph . . . . . hereof, in lieu of the rates (rules, regulations, **or** practices) named in said paragraph, such other maximum rates (rules, regulations, **or** practices) as the Commission may deem reasonable and just (and also pay to complainant by way of reparation for the unlawful charges hereinbefore alleged the sum of . . . . . , or such other sum as, in view of the evidence to be adduced herein, the Commission shall determine that complainant is (are) entitled to as an award of damages under the provisions of said act for violation thereof), and that such other and further order or orders be made as the Commission may consider proper in the premises.

Dated at . . . . . , 19 . . .

. . . . .  
(Complainant's signature.)

See I. C. C. Prac. & Proced. Rule 20, Appendix, *post*.  
Watkins "Shippers and Carriers," section 288, pp. 399-401.  
I. C. C. Prac. & Proced. Rules, Form 1, Appendix, *post*.

Complaints for filing with the Interstate Commerce Commission must be typewritten on one side of the paper only, and on paper not more than 8½ inches wide and not more than 12 inches long and weighing not less than 16 pounds to the ream, folio base 17 by 22 inches, with left hand margin not less than 1½ inches wide, or on antique-finish paper, 5½ inches wide by 9 inches long, with suitable margin, the same as required for briefs.

I. C. C. Prac. & Proced. Rules, Rules Nos. III and XIV.

The following are the general requisites as to contents of a formal complaint:

**1. Caption:**

- (a) "Before the Interstate Commerce Commission."
- (b) Names of parties, complainants, and defendants, and docket number when assigned by the Commission. The corporate name of the carrier or carriers defendant must be stated in full, without abbreviation.

**2. Address:**

"To the Interstate Commerce Commission."

**3. Introduction:**

- (a) Description of complainant, business and interest in the proceeding.
- (b) Description of defendant, occupation and clause stating that it is subject to the act or interested in the complaint.

**4. Stating part:**

- (a) Setting up facts which in the view of the complaint constitute a violation of the Act and setting out the particular portion or portions of the Act alleged to be violated.
- (b) Effect of action or inaction or practice of the defendant on complainant's business.

**5. Changing part:**

- (a) Concurrences of defendants in tariffs (if necessary).
- (b) Concerted action of the defendants to bring about existing rates, practices, etc. (This is only used when to advantage and the circumstances warrant.)
- (c) Allying the pretences by which the defendant excuses or justifies the rates or practices. (This is occasionally of value for if properly stated and the

defendant has no other defense than alleged, argument may be had on petition and answer.)

**6. Prayers:**

- (a) For service of complaint and answer.
- (b) For such special relief, as in view of the facts stated in the petition and Act, the complainant thinks he is entitled.
- (c) For general relief, and reparation if it is the intent of the complainant to recover damages.

**7. Conclusion:**

- (a) Date and place of signing.
- (b) Signature of complainant, and counsel, if any, with address of each, on each copy of the complaint.

The petition or complaint need not be verified.

The complainant must furnish as many complete copies of the complaint as there are parties defendant, and three additional copies for the use of the Commission.

Daish *Proced. in I. C. Cases*, section 74, p. 101, par. 2.  
See *Rules of Practice and Forms in Appendices to this volume, post.*

**Contents of a formal complaint must**

**1. Briefly State the Facts.** The Act, section 13, states that the complaint or petition "shall briefly state the facts." This should be understood to mean that sufficient facts should be set up in the complaint to clearly show the complainant's right to obtain the relief sought, and such facts should be set forth plainly, accurately, and logically directed to a common end.

**2. Sufficient to Charge Violation of Act.** The allegations of the complaint must be sufficient to show violation of the Act. For instance, failure to show in complaint or petition that act of carrier complained was involved in interstate transportation would cause the complaint to fail.



**3. Must Allege What is Reasonable Rate.** When a complaint attacks a rate as unreasonable, relatively or *per se*, it must allege what is a reasonable rate.

**4. Sufficient to Advise Defendant of Nature of Complaint.** The allegations of a complaint must be sufficient to advise the defendant of the nature of the complaint.

**5. Not be too Broad for Relief Asked to be Afforded.** A complaint may be too broad in its scope of attack for the relief asked to be afforded by the Commission.

**6. Not be for Retaliation Purposes.** A complaint having for its purpose retaliation is repugnant to Commission's purpose.

Daish *Proced.* in I. C. Cases, section 75, p. 102.

Same (and La Crosse M. & J. Un. vs. C. M. & St. P. R. R. Co., 11 I. C. C. R. 629).

Same (and White vs. M. C. R. R. Co., 3 I. C. C. R. 281).

Same, section 75, p. 103.

Same, section 76, p. 103, (M. & K. Ass'n. vs. A. T. & S. F. R. R. Co., 13 I. C. C. Rep. 411).

Same, section 75 (and Natl. Pet. Ass'n. vs. A. A. R. R. Co., 14 I. C. C. R. 272).

Same, section 75 (and Slater vs. N. P. R. R. Co., 2 I. C. C. R. 359).

## **§ 2. Who May Be Parties to the Bringing of Complaints Before the Commission.**

Rule II, of Rules of Practice before the Commission, permits any person, firm, company, corporation, or association, mercantile, agricultural, or manufacturing society, or other organization, body politic, or municipal organization, or any common carrier, or the railroad commissioner or commission of any state, or territory, to complain to the Commission by petition.

Treating the above designated entities as persons so far as interest may be concerned, the safe rule to follow is that "only a person interested in his own right can file a complaint."

Ullman vs. Adams Ex. Co., 14 I. C. C. R. 585.

A receiver or trustee of any carrier subject to the provisions of the Act to Regulate Commerce, may be made party-defendant in an action before the Commission.

6 I. C. C. R. 520.

If a complaint relates to rates, regulations, or practices of a single carrier, no other party need be made party.

If it relates to matters in which two or more carriers, engaged in transportation by continuous carriage or shipment, are interested, the several carriers participating in such carriage or shipment are proper parties defendant.

Where the line of a carrier is operated by a receiver or trustee, both the carrier and receiver or trustee should be made defendants. The receiver or trustee is just as amenable to the Act as the carrier, but the Commission is entitled to know in the first instance that it is dealing with a carrier in the hands of the court.

Persons or carriers, not parties, may petition in any proceeding for leave to intervene and be heard therein. Such a petition must set forth the intervening petitioner's interest in the proceeding. Leave granted upon such an application shall entitle the intervener to appear and be treated as a party to the proceeding, but no person not a carrier who intervenes on behalf of the defense shall have the right to file an answer or otherwise become a party except to have notice of and appear at the taking of testimony, produce and examine witnesses, and be heard in person or by counsel on the argument of the case.

Two or more complainants may join in one complaint against one or more carriers.

Complaints embodying the same or substantially the same principle, subject, or state of facts, even though two or more rates or regulations are alleged to be reasonable or discriminatory, and numerous shipments are involved,

should be included in one complaint in which the several rates, regulations, or practices complained of, and the specific shipments involved, are set forth in separate paragraphs, and exhibits.

If separate complaints by the same or different parties rest upon the same principle or upon the same substantially similar state of facts, the Commission, will, in its discretion, consolidate the several complaints into one case, under one number, and title, and dispose of the same at one hearing and in our report.

I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 206.

Where a complaint relates to the provisions of a classification it is usually sufficient to name the principle carriers shown as parties to the classification schedule as parties defendant.

I. C. C. Prac. & Proced. Rules, Rule No. II, *post*.

Two or more persons or firms may join in one complaint against one or more carriers in cases where the subject matter of the complaint involves substantially the same principle subject or state of facts.

If one complainant or two or more complainants file separate complaints which rest upon the same principle or upon the same or a substantially similar state of facts, the Commission will, in its discretion consolidate the several complaints into one case, under one number and title, so that the same may be disposed of in one hearing and in one report.

Reparation will not ordinarily be awarded in a formal case attacking a rate as unreasonable or otherwise in violation of law unless intent to claim reparation is specifically disclosed therein, or in an amendment thereto, filed before the submission of said case. The Commission may, however, in the exercise of its discretion, upon good cause

shown, and under unusual circumstances, deal specially with a particular claim for reparation.

Claims for reparation based upon a decision of the Commission filed by complainants not parties to the case in which such decision was rendered will not ordinarily be allowed unless such reparation was claimed in the complaint upon which such decision of the Commission was awarded. The Commission may, however, in the exercise of its discretion, upon good cause shown, and under unusual circumstances, specially consider a particular claim for reparation of this class.

Complaints for reparation must disclose as nearly as possible all the claims of complainant or complainants covered by or involved in the complaint, except that when a general rate adjustment or a rate under which many shipments have been made to many destinations, or from many points of origin by many shippers, is involved, complaint may contain specific prayer for reparation on all shipments, and the proving up as to shipments and amounts of reparation due thereon be left until the questions of the reasonableness of the rate or rates and whether or not reparation under a decision that has been rendered must include all his shipments and claims in one complaint or statement.

I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 206.

I. C. C. Prac. & Proced. Rules, Rule III.

### **§ 3. Complainant Need Not Be Free From Fault.**

The complainant need not come before the Commission with clean hands as in a court of equity, and "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant," says the statute.

Act to Regulate Commerce, section 13.

And even though the complainant himself has violated the law, the Commission will act on the complaint for the benefit of the public.

Page vs. D. L. & W. R. R. Co., 6 I. C. C. Rep. 148, 4 I. C. Rep. 525.

Likewise where an individual filed a complaint, and professed his intention to become a shipper, the Commission proceeded on the complaint.

#### § 4. Description of Parties—Complainants or Petitioners.

Proper and sufficient description of the full nature and capacity of the complaining party should be stated in the introductory portion of the complaint, petition or application, as—

“John Doe, a citizen and resident of . . . . .”

“John Doe, and John Smith, doing business under the firm name and style of ‘Doe and Smith’.”

“John Doe & Company, a corporation organized and existing under the laws of the State of Montana.

“John Doe, Receiver of . . . . . (fully described as an individual, partnership, firm, or corporation)”, and if receiver or other fiduciary officer, show in what court or source such capacity arises.

If a voluntary association, the complainant should be so described as to indicate the nature, purpose and general occupations of its membership.

The complainant’s business should be so described as to indicate its nature and the commodities dealt in.

#### Defendants.

The complaint, petition or application should so describe the defendant carrier as to indicate that the “defendant is a common carrier (or a corporation

organized and existing under the laws of the state of....., if desired,) engaged in the transportation of passengers and property by railroad between points in the state of..... and points in the state of....., and as such common carrier is subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto." In stating the corporate name of the carrier include the word "The" where it is a part of the name, and use the word "Railroad" or "Railway," or the words "Railroad Company," or "Railway Company" as the case may be, or omit the word "Company" if it is not part of the corporate name of the carrier.

### § 5. Complaint by One Party on Behalf of Other Parties.

Complaints may be brought by a single party on behalf of other parties not named or named, therein, or on behalf of voluntary associations or commercial bodies, or on behalf of localities or committees; and in the same manner as to defendants where some may be unknown to the complainant.

So. P. L. Co. vs. S. Ry. Co., 14 I. C. C. R. 195.

Eddleman & Co. vs. M. V. R. R. Co., 13 I. C. C. R. 103.

Compare:—

M. & K. S. Ass'n. vs. Atchison T. & S. F. Ry. Co., 13 I. C. C. Rep. 411, holding that a complaint by an association demanding reparation under general averments, which does not name the members on whose behalf it is filed and which does not with reasonable particularity specify and describe the shipments as to which the complaint is made, will not operate to stop the running of the period of limitation fixed by law.



**§ 6. New Parties.**

New parties complainant or defendant may be added to any proceeding before the Commission, while pending, by intervention, amendment, or substitution, and amendment of pleadings will be permitted in accordance therewith, and where a pending case involves matters affecting others the parties thereto, the affected public may appear and be heard.

*Reynolds vs. W. N. Y. & P. R. R. Co.*, 1 I. C. C. R. 393, permitting receiver to intervene and substitute for original party.

*Re C. St. P. & K. C. R. R. Co.*, 2 I. C. C. R. 231, permitting public generally to attend and be heard.

**§ 7. Copies of Complaints or Petitions.**

The complainant must furnish as many copies of the complaints or petitions as there may be parties complained against to be served and three additional copies for the use of the Commission.

I. C. C. Prac. & Proced. Rules, Rule No. III.

**§ 8. Pleading by Complainant of Anticipated Defense.**

If the complainant in framing his complaint knows the defense which the defendant carrier will advance thereto, it is proper and well that he should plead such defense in the complaint. This negation of the adverse party's reason or reasons for not satisfying the complainant's demands will frequently render unnecessary the taking of evidence, and the case will be disposed of upon complaint, answer and arguments or briefs. If the issue becomes purely one of law, only a legal argument is necessary to put the case before the Commission for decision.

**§ 9. Use of Technical Terms, Trade Names, or Abbreviations in Pleadings.**

While the use of technical terms, trade names, commercial idioms, or abbreviations in general use may be per-

mitted in the contents of complaints and other pleadings, such a practice is not to be encouraged. It is just as easy, and far more simple and direct, to give names of parties, titles, commercial practices, and articles, in full.

#### **§ 10. Pleading Facts Unknown to Complainant or Within the Knowledge of the Adverse Party.**

Certain information that may be necessary to sustain a complaint may be of such a nature as to be within the sole knowledge of the adverse party and in that case the complaint does not fail because of the inability of the complainant to allege such matters in fact. Again, it happens that certain facts are unknown with certainty to the complainant but which are material to his case, and in that event he may set forth such facts and allege that he believes them to be true.

#### **§ 11. Pleading of Tariffs, Contracts, and Other Documents.**

Where it is necessary to set up in the complaint a carrier's schedule or tariff on file with the Commission, reference simply by the number, date effective, and its general application in brief, is sufficient.

**Example.** "Ann Arbor Railroad Company, Tariff I. C. C. No. 1587, effective June 18, 1912, naming rates on various commodities between points shown therein."

If the tariff covers transportation of commodities over the lines of two or more carriers, and it is desired to show the concurrence of the intermediate or final carrier, its form and number may be included as "fx 2 No. 79."

Where it is necessary in a complaint to refer to contracts or other documents upon which the complaint may be based, it is not necessary nor desirable to set them out in full in complaint, but to so refer to them as to show

their legal effect upon the rights set up in the complaint. As to those contracts and agreements on file with the Commission, as required by section 6 of the Act, it is only necessary to refer to them in any complaint based thereon. Such written instruments should not be made part of complaints but, if desired, may be attached as exhibits.

## § 12. Amending Complaints.

In law, complaints setting up causes of action must stand or fall upon the sufficiency or insufficiency of their allegations, but the practice before the Commission is more liberal, and there an omission is not vital to the complaint. If a complaint fails to state a cause of action under the statute, it will be returned and its redrafting requested in accordance with the Rules of the Commission. Unless a complaint is defective upon its face at the time of its filing with the Commission, it will be accepted and filed by the Commission and service had upon the defendant parties. It may be amended thereafter, even after answer has been filed. However, if the subject of the amendment is important in the ultimate result of the case, or is in the nature of surprise to the defendant, such amendment will not be permitted without notice. The theory of this practice is that the carrier is entitled to know the charge against it in time to prepare to meet it. Evidence will also be permitted outside of the allegations of the complaint, even though such evidence may tend to show other violations than those alleged in the complaint.

Permitting the amendment of a complaint or answer in a proceeding before the Commission, is entirely discretionary with that body.

**§ 13. Complainant's Case not Concluded by Allegations of His Complaint; Liberal Rule of the Commission.**

The Commission's rule on the sufficiency of pleadings is most liberal. Thus, says Mr. Daish.

"The allegations of a petition or answer are not technically conclusive on the party pleading. He is not estopped by an allegation, nor is he ordinarily precluded from changing his ground of action or defense unless such change would effect a surprise to the opposing party. A complaint may have no allegation to support a particular line of testimony, yet the evidence is usually received 'for what it is worth'; so, also, a defendant carrier may have omitted a defense in its answer yet it is permitted to adduce evidence in support thereof whether the new defense be in addition to or even in part inconsistent with the defense pleaded.

"It not infrequently happens that where the complainant has made numerous allegations he finds at the hearing that he is either without evidence to support some of them or that, if proven, they would not constitute a violation of the law. In such cases it is the practice for the complainant to state upon the record that he does not propose to adduce testimony upon, or make argument concerning the particular allegations, thereby waiving his right to proceed thereunder."

Daish *Proced. in I. C. Cases*, section 84, p. 107, par. 1.  
In *Re Differential Freight Rates*, 11 I. C. C. Rep. 13.

See also:—

*Lehigh Valley R. R. Co. vs. American Hay Co.*, 219 Fed. Rep. 539.



## CHAPTER V.

### PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION (CONTINUED).

#### RULES OF PRACTICE.

- § 1. Rules Governing Special Circumstances.
- § 2. Stays of Proceedings.
- § 3. Service of Complaints by Commission.
- § 4. Appearances.
- § 5. Notice in Nature of Demurrer.





## CHAPTER V.

### PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION (CONTINUED).

#### RULES OF PRACTICE.

##### § 1. Rules Governing Special Circumstances.

If the complainant fails to appear at the hearing, as fixed and assigned by the Commission, and a copy of the defendant's answer having been served upon him, or if the complainant admits the legality of the defendant's acts, or totally fails to produce any evidence to prove the issue, the complaint will be dismissed.

Jackson vs. St. Louis & C. R. Co., 1 I. C. R. 599.

**Re** Export Trade of Boston, 1 I. C. C. R. 24, 1 I. C. R. 25.

Leonard vs. Un. Pac. R. Co., 1 I. C. C. R. 185, 1 I. C. R. 627.

Rice vs. L. & N. R. Co., 1 I. C. C. R. 503, 1 I. C. R. 354.

Holbrook vs. St. P. & C. R. Co., 1 I. C. C. R. 102. 1 I. C. R. 323.

On the other hand, if the defendant does not appear at the hearing, and in the absence of any showing tending to justify an advance in rates, they will be presumed unreasonable, and, if included, reparation will be ordered on shipments made under them.

Sunderland Bros. vs. P. M. R. Co., 16 I. C. C. R. 450.

##### § 2. Stays of Proceedings.

The Commission may in a proper case stop the proceedings and hold the case open until a future time: Where the Commission has previously heard and made an order in a similar case, and proceedings to enforce such order are then pending in the courts;

Where the Commission has previously indicated its views with regard to such a case and recommends to the

carriers to amend their tariffs in accordance with such opinion, and holds case open for future application by the parties.

So. Paint & G. Co. vs. L. E. & W. R. Co., 6 I. C. C. R. 284.

Paine Bros. & Co. vs. Lehigh V. R. Co., 7 I. C. C. R. 218.

Rea vs. Mobile & Ohio R. Co., 7 I. C. C. R. 43.

And where a carrier at the hearing agrees to conform to the desires of the Commission, no order will be made, but the case will be continued to give the carrier an opportunity to remove the cause of complaint.

Re Unlawful Tran. Charges, 6 I. C. C. R. 624.

Holbrook vs. St. P., etc., R. Co., *supra*.

Hot Springs vs. Western N. C. R. Co., 1 I. C. R. 316.

### § 3. Service of Complaints by Commission.

All complaints concerning anything done or omitted to be done by any common carrier subject to the Act, and all petitions or answers in any proceeding, or applications in relation thereto, must be addressed to "The Interstate Commerce Commission, Washington, D. C."

I. C. C. Prac. & Proced. Rules, Rule No. XXI.

The Commission will cause a copy of the petition or complaint with notice to satisfy or answer the same within a specified time, to be left with the defendant's agent in the District of Columbia. In case the defendant has no agent in the District, service of the complaint is made by posting a copy in the office of the Secretary of the Commission.

Most carriers have indicated permanent officials or attorneys upon whom the service of all papers directed against them may be made and service in this manner is generally obtained by registered mail.

The usual time allowed a defendant to satisfy or answer the complaint is twenty days. This, however, is entirely

within the discretion of the Commission, and the Commission may also allow extensions of such time as it may deem proper.

#### § 4. Appearances.

The appearance of the defendant or his counsel is not required under the strict rule which obtains in court practice, but is assumed from the very filing of the answer. The appearance of both the complaining and defending parties, and their counsel, if any, is made of record when the case is ready for hearing. The requirement that the name and address of the complainant and defendant, or counsel, if any, on all pleadings filed, suffices for all necessary appearances.

#### § 5. Notice in Nature of Demurrer.

A defendant who deems the complaint insufficient to show a breach of legal duty may, instead of answering or formally demurring, serve on the complainant notice of hearing on the petition; and in such case the facts stated in the petition will be deemed admitted. A copy of the notice must be at the same time filed with the Secretary of the Commission. The filing of an answer, however, will not be deemed an admission of the sufficiency of the petition, but a motion to dismiss for insufficiency may be made at the hearing.

Rule V, Rules of Practice of I. C. Com.

This form of pleading is of no practical avail, in proceedings instituted under the first and third sections of the Act, for the reason that the determination of the very question which such a notice raises is dependent upon the determination of whether the existing rate be unjust or unreasonable or the alleged discrimination undue. In raising

questions of sufficiency or jurisdiction, under complaints brought for violations of the statute, the allegations of such complaints are deemed to be admitted by the defendant.

In cases where no evidence is necessary to show the effect of the facts alleged, a notice in the nature of a demurrer is well intended to expedite their determination.

## CHAPTER VI.

### PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION (CONTINUED).

#### ANSWERS TO COMPLAINTS.

- § 1. Answers to Complaints—Joint Answers.
- § 2. Service of Notice in Nature of Demurrer and Answer.
- § 3. Exceptions to Answer.
- § 4. Defendant's Case not Concluded by Allegation in Answer; Liberal Rule of the Commission.
- § 5. Admissions.
- § 6. Stipulations.





## CHAPTER VI.

### PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION (CONTINUED).

#### ANSWERS TO COMPLAINTS.

##### § 1. Answers to Complaints—Joint Answers.

The statute requires that a complaint shall be satisfied or answered by the defendant "within a reasonable time" to be specified by the Commission. The Commission has formulated a rule requiring a defendant whose general offices are located west of El Paso, Texas, Salt Lake City, Utah, or Spokane, Washington, to answer in writing a complaint against it within thirty days from the date of service of the complaint upon defendant or its authorized agent, and all other defendants are required to answer within twenty days from the date of service.

The original answer must be filed with the Secretary of the Commission at its office in Washington and a copy thereof at the same time served by the defendant personally or by mail upon the complainant, who must forthwith notify the Secretary of its receipt.

If the defendant shall make satisfaction before answering, a written acknowledgment thereof, showing the character and extent of the satisfaction given, must be filed by the complainant and in that case the fact and manner of satisfaction be made after the filing and service of an answer, such written acknowledgment must also be filed by the complainant, and a supplemental answer setting forth the fact and manner of satisfaction must be filed by the defendant.

Generally speaking, the answer must specifically admit or deny the material allegations of the complaint and also

set forth the facts which will be relied upon to support any such denial. This does not preclude the defendant from setting up as many defenses as he may technically have, but numerous and inconsistent defenses are usually disadvantageous, if not altogether embarrassing. The resemblance to equity pleadings clings to the answer as to the complaint, but it, like the petition, is devoid of the technicalities and formalities of the court practice. Neither does the answer seek affirmative relief against the complainant. It asks but one thing, the dismissal of the petition.

The answer may deny the complainant's right to sue, but in ordinary cases it admits the right of action and the jurisdiction of the Commission, that the defendant is subject to the Act to Regulate Commerce and the Act supplementary thereto, and to all lawful orders of the Commission. The answer by denial may raise the jurisdiction question, separate from the issues formed in the case. Thus the answer would be in the nature of a demurrer, and if the Commission determines against its jurisdiction, the case ends there; but if it holds in favor of its jurisdiction, the carrier has failed to answer thereto.

If the complaint contains allegations in the nature of a confederacy clause to the effect that the existing rate, practice or regulation, is maintained and enforced in violation of the Sherman Anti-Trust law, it is the usual practice of the carriers to deny any violation thereof.

Daish *Proced. in I. C. Cases*, section 107, page 124, par. 3.

If the defendant fails to answer the complaint at all, the Commission will take such proof of the facts as may be deemed proper and reasonable, and make such order thereon as the circumstances of the case seem to require.

If the defendant's answer be directed to the merits of the complaint, the defendant is not precluded from thereafter raising jurisdictional questions or testing the sufficiency of the petition. Even after the answer on the merits has been filed at the time when the defendant might properly have filed a notice in the nature of demurrer and raised the question of sufficiency or jurisdiction, his failure to file such notice does not stop him from thereafter, raising the same question, and at the hearing the defendant may make a motion to dismiss on the ground of insufficiency.

Again, a carrier may be made defendant in a proceeding where it in no wise handles, participates in, or has in force any rules or regulations relating to, the traffic involved, nor is it intended that he shall handle or participate therein. In such event, the carrier may file answer by way of disclaimer, and either by consent of the complainant, or in the discretion of the Commission, such carrier may be dismissed from the proceedings.

The practice of the Commission permits the filing of joint answers; in fact, such answers, are encouraged as methods in aid of simplification and expedition. Joint answers may be made where the facts are such, or the management of the several defendants, or their common interests, that they may advantageously plead their answer in that manner. If among two or more defendants joining in answer, one desires to set up separate and different answer, it may do so.

## **§ 2. Service of Notice in Nature of Demurrer and Answer.**

Notices in Nature of Demurrer and Answers must be served upon the adverse party or parties, personally or by mail, and when any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.

### § 3. Exceptions to Answer.

While a very different practice, exceptions may be filed to so much of an answer as sets up irrevelant or immaterial matter. This was done in the case of the **National Hay Association vs. L. S. & M. S. Ry. Co.**, 9 I. C. C. Rep. 264. Such a step in the proceedings, while not exactly repugnant to, is not at all harmonious with the expressed intention of the Commission to prevent the interposing of pleas of a dilatory nature.

### § 4. Defendant's Case not Concluded by Allegation in Answer; Liberal Rule of the Commission.

The same liberality is indulged by the Commission with respect to the conclusiveness of the allegations in answers as was noted with respect to the same defects in complaints. A defendant may answer but a portion of the allegations of the complaint but he is not concluded from producing evidence to justify his acts alleged in the complaint to be in violation of the statute upon any additional ground or reason which existed at the time of answering or subsequently. The failure of the defendant to file a complete answer does not restrict the scope of the evidence he may produce at the hearing nor estop him from setting up a new and additional defense to the complaint's allegations.

### § 5. Admissions.

Parties to the proceedings are bound by the admissions made in the pleadings but not to such an extent as is usual in courts. The better practice is to have an admission made verbally at the hearing in addition to the admission made in complaint or answer. An admission made by a complainant or a defendant does not bind a co-complainant or

a co-defendant; neither will an admission in one case bind the same party in another case involving similar issues. An admission by an agent will bind the principal but not if made prior to the institution of proceedings. **Michigan Cong. Water Co. vs. C. & G. T. R. Co.**, 2 I. C. C., 594.

Admissions may occur in the pleadings, or presumption in the nature of admissions may arise from the evidence.

The averment of a defense binds a carrier and it is under a duty to introduce evidence thereunder. **R. Com. vs. Clyde Steamship Co.**, 5 I. C. C. 324. \* \* \*

A long-continued rate or practice may create a presumption in the nature of an admission of the reasonableness thereof. **National Hay Association vs. L. S. & M. S. R. Co.**, 9 I. C. C. 264. \* \* \*

Daish Proc'd. in I. C. Cases, section 87, p. 109.

## § 6. Stipulations.

Parties to any proceeding or investigation before the Commission, may by stipulation or agreement in writing filed with the Secretary of the Commission, agree upon the facts, or any portion thereof, involved in the controversy, which stipulation shall be regarded and used as evidence on the hearing. The Commission desires that facts be thus agreed upon whenever practicable.





## CHAPTER VII.

### PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION (CONTINUED).

#### HEARINGS—EVIDENCE.

- § 1. Hearings and Evidence Before Commission.
- § 2. Taking of Depositions.
- § 3. Subpoenas for Attendance and Testimony of Witnesses and for the Production of Documentary Evidence
- § 4. Evidence in Proceedings Before the Commission.
  - (1) Fees for Magistrate and Witnesses.
  - (2) Power of Commission to Compel Attendance and Testimony of Witnesses.
  - (3) Refusal or Neglect to Attend and Testify; Penalty For.
  - (4) Immunity of Witnesses and Power to Compel Self-Incriminating Testimony.
  - (5) Adverse Witnesses.
  - (6) Documentary Evidence.
  - (7) Qualifications and Competency of Witnesses.
  - (8) Notice to Produce Documentary Evidence.
  - (9) Examination of Witnesses—Illustrated.
  - (10) Objections and Exceptions to the Evidence.
  - (11) Introduction of Documentary Evidence.
  - (12) Evidence—Burden of Proof.
- § 5. Rules of Evidence.
- § 6. Judicial Notice.
- § 7. Doctrine of Stare Decises.
- § 8. Evidence; General Nature of.
- § 9. Elements of Evidence Necessary in Proceedings Under Provision of the Act; Illustrative Cases.
- § 10. Where the Statute Indicates the Nature of the Evidence it must be Shown in Cases—
  - (1) To Procure Continuous Carriage.
  - (2) To Procure the Making of Through Routes and Joint Rates.
  - (3) Alleging Failure to Make Switch Connections.
  - (4) To Compel Publication, Filing and Posting of Tariffs.
  - (5) To Compel Issuance of Receipt of Bill of Lading as Required by section 20.
- § 11. Where the Statute Does Not Indicate the Necessary Evidence.
  - (1) Alleging Failure to Furnish Facilities for Interchange of Traffic.

- (2) Alleging a Violation of the Long and Short Haul Section.
- (3) In the Nature of Applications by Carriers for Relief from the Long and Short Haul Section.
- (4) To Determine the Just and Reasonable Charge to be Paid by the Carrier for the Service performed by the Shipper.

§ 12. Unreasonable and Unjust Regulations or Practices.

§ 13. Unjust Discriminations Between Persons.

- (1) Involving Reasonableness of Rates.
- (2) Involving the Classification of Freight.
- (3) Involving Undue or Unreasonable Prejudice or Disadvantage of Localities.
- (4) Involving Undue Prejudice or Disadvantage of Particular Kinds of Traffic.
- (5) Involving Reparation.

§ 14. Investigations by the Commission.

- (1) When Orders Become Effective.
- (2) Duration of Orders.
- (3) Service of Orders of Commission.
- (4) Modification of Suspension of Orders of Commission.
- (5) Compliance with Orders of Commission.
- (6) When Final Order May be Entered by Commission.
- (7) Where Order of Commission Fails to Specify Its Duration.
- (8) When Final Order Entered by Commission.
- (9) Cases in Which Orders will not be Made.
- (10) Waiver of Statutory Requirement Relating to Filing of Tariffs, in Orders Fixing Reasonable Rates.
- (11) Pendency of Suit in Court does not Prevent Order being Entered by Commission in Proceedings Pending Before it.
- (12) Commission will not Enter Order Where Carriers, not Made Parties, have a Right to be Heard.
- (13) Commission not Estopped from Making Order Because of Having Passed upon Subject in Former Case.
- (14) Orders for the Payment of Money.
- (15) Purpose of Statutory Period Before Order Becomes Effective.
- (16) Order may be Issued for Partial Relief.
- (17) Commission may fix time During Which Relief Conceded shall Prevail.
- (18) Order may be Composite One.
- (19) Orders of Commission Dismissing Complaints or Proceedings.

## CHAPTER VII.

### PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION (CONTINUED).

#### HEARINGS—EVIDENCE.

#### § 1. Hearings and Evidence Before Commission.

Upon issue being joined by the service of an answer or notice of hearing on the petition, the Commission will assign a time and place for hearing the case, which will be at its office in Washington, unless otherwise ordered. Witnesses will be examined orally before the Commission, unless their testimony be taken or the facts agreed upon as provided for in Commission's rules.

While the technical rules governing the presentation and introduction of evidence in a court of law do not obtain in hearings before the Commission or its Examiners, the procedure is similar to the order of procedure in courts and is usually as follows:

1. Opening statement of the issues by the Complainant. This step may be dispensed with in the discretion of the Commissioner or Examiner hearing the case.
2. Statement by Defendant outlining its defense. The defendant may make his statement at this time or at the conclusion of the complainant's direct evidence, and before the introduction of the defendant's evidence. This statement may be dispensed with in the discretion of the Commissioner or Examiner hearing the case.
3. Introduction of Complainant's Evidence.
  - (a) Oral evidence.
  - (b) Documentary evidence.

4. Introduction of Defendant's Evidence.
  - (a) Oral evidence.
  - (b) Documentary evidence.
5. Complainant's Rebuttal Evidence.
6. Defendant's Sur-Rebuttal Evidence.
7. Oral Argument by Complainant.
8. Oral Argument by Defendant.
9. Closing Oral Argument by Complainant.
10. In the event a case is not argued, or in the event it is both argued and briefed, briefs may be filed in accordance with the rules of the Commission.

I. C. C. Prac. & Proced. Rules, Rule No. XIV.

The complainant must in all cases establish the facts alleged to constitute a violation of the law, unless the defendant admits the same or fails to answer the petition. The defendant must also prove facts alleged in the answer, unless admitted by the petitioner, and fully disclose its defense at the hearing.

In case of failure to answer, the Commission will take such proof of the facts as may be deemed proper and reasonable, and make such order thereon as the circumstances of the case appear to require. Cases may be heard by one or more members of the Commission or by a special agent or examiner, as ordered by the Commission. When testimony is directed to be taken by a special agent or examiner, such officer shall have power to administer oaths, examine witnesses, and receive evidence, and shall make report thereof to the Commission.

After answer has been filed and acknowledgment thereof made to the Commission, either party to a case may request the hearing set for a specified time and place. This may be done by letter, or in form as prescribed:

..... }  
vs. }  
..... }

(Signature).....(or title)

The testimony of any witness may be taken by deposition, at any instance of a party in any case before the Commission, and at any time after the same is at issue. The Commission may also order testimony to be taken by deposition, in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any authorized special agent or examiner of the Commission, judge of any court of the United States, or any commissioner of a circuit or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court or court



of common pleas of any state of the United States, or any notary public, not being of counsel or attorney for either of the parties or otherwise interested in the proceeding or investigation. Reasonable notice must be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition, and a copy of such notice shall be filed with the secretary of the Commission.

When testimony is to be taken on behalf of a common carrier in any proceeding instituted by the Commission on its own motion, reasonable notice thereof in writing must be given by such carrier to the secretary of the Commission.

Every person whose deposition is taken shall be cautioned and sworn (or may affirm, if he so requests) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing, which may be typewriting, by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the witnesses.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the secretary of the Commission. All depositions must be promptly filed with the secretary of the Commission, who opens and files such depositions as a part of the record in the proceedings.

**In Re** Procedure in Cases at Issue, 1 I. C. C. R. 223.  
U. S. Rev. Stats., sections 863, 864.

The Commission has power to order the deposition of a witness on its own motion, and by section 12 of the Act, may compel any person to appear and depose in the same manner that witnesses are compelled to appear and testify before the Commission.

Section 12 of the Act requires that all depositions so taken must be promptly filed with the Commission.

Depositions thus taken also are governed by section 864 of the Revised Statutes of the United States.

### **§ 3. Subpoenas for Attendance and Testimony of Witnesses and for the Production of Documentary Evidence.**

Subpoenas requiring the attendance of witnesses from any place in the United States at any designated place of hearing, for the purpose of taking the testimony of such witnesses orally before one or more members of the Commission, or an authorized special agent or examiner of the Commission, or by deposition, will, upon the application of either party, or upon the order of the Commission directing the taking of such testimony, be issued by any member of the Commission.

Subpoenas for the production of books, papers, or documents (unless directed to issue by the Commission upon its own motion) will only be issued upon application in writing; and when it is sought to compel witnesses, not parties to the proceeding, to procure such documentary evidence, the application must be sworn to and must specify, as nearly as may be, the books, papers, or documents desired; that the same are in the possession of the witness or under his control; and also, by facts stated, show that they contain material evidence necessary to the applicant's case. Applications to compel a party to the proceedings

to produce books, papers, or documents desired, must properly describe such books, papers, or documents to be produced, and must aver that the applicant believes such documentary evidence will be of service in the determination of the case.

#### § 4. Evidence in Proceedings Before the Commission.

(1) **Fees for Magistrate and Witnesses.** Witnesses whose testimony is taken orally or by deposition, and the magistrate or other officer taking such depositions, are severally entitled to the same fees as are paid for like services in the courts of the United States, such fees to be paid by the party at whose instance the testimony is taken.

The scale of fees for witnesses as fixed by law, are, \$1.50 for each day's attendance at the place of hearing or taking of the deposition, and 5 cents per mile for the total mileage in going from the witness' place of residence to said place of hearing or taking of deposition and returning therefrom.

When a witness is detained in prison for want of security for his appearance he shall be entitled, in addition to his subsistence, to a compensation of one dollar a day.

U. S. Rev. Stats., section 848.

When tender of witness fees is made, the service of the subpoena and the tender are generally made through the United States' Marshal's office in the district in which the hearing is to be held.

(2) **Power of Commission to Compel Attendance and Testimony of Witnesses.** The power of the Commission to compel the attendance of witnesses, or the production of books, papers, or documents, is conferred by section 12 of the Act. "The Commission shall have power to require,

by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation. Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing." Unless the Commission on its own motion issues a subpoena for the production of documents, such subpoenas will only be issued upon application in writing, setting forth in a general way the documents desired and the statement that the applicant believes they will be of service, in the determination of the case. This applies to persons, parties to the proceedings. As to persons not parties to the proceedings, the application must be verified and specify the documents desired and the facts to be proven by them.

I. C. C. Prac. & Proced. Rules, Rule No. XII, *post*.  
*Harriman vs. I. C. C.*, 211 U. S. 407.

See also:—

*U. S. vs. Skinner*, 218 Fed. Rep. 870.

**(3) Refusal or Neglect to Attend and Testify; Penalty For.** In case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of the Act. Any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission and give evidence touching the matter in question;

and any failure to obey such order of the court may be punished by such court as a contempt thereof. Such order of court will likewise apply as to the production of books, and papers if so ordered by the Commission.

Act to Reg. Com. section 12.

The Immunity of Witnesses Act (Public No. 54, approved February 11, 1893) provides that any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission shall be guilty of an offense, and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year, or both such fine and imprisonment.

In addition to these provisions, the Elkins Act, empowers the courts to compel the attendance of witnesses, in the following language:

“And in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concern-

ing which he may testify or produce evidence documentary or otherwise in such proceeding."

Elkin Act, section 3.

And in the Accidents Reports Act, it is also provided:

"The Commission, or any impartial investigator thereunto authorized by said Commission, shall have authority to investigate such collisions, derailments, or other accidents aforesaid, and all the attending facts, conditions, and circumstances, and for that purpose may subpoena witnesses, administer oaths, take testimony, and require the production of books, papers, orders, memoranda, exhibits, and other evidence, and shall be provided by said carriers with all reasonable facilities."

Accidents Report Act, section 3.

(4) **Immunity of Witnesses and Power to Compel Self-incriminating Testimony.** The claim that such testimony or evidence may tend to incriminate the person giving such evidence shall not excuse the witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Act to Reg. Com., section 12.

Im. of Wits. Act, section 1, No. 54, app. Feb. 11, 1893.

The claim that the testimony or evidence which a witness might give would tend to incriminate him or subject him to a penalty or forfeiture will not excuse a subpoenaed person from attending and testifying or from producing books, papers, tariffs, contracts, agreements, and documents before the Commission, whether in obedience to such subpoena of the Commission, or its lawful order, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the Act to Regulate Commerce or any of the Acts supplementary thereto.

Im. Wits. Act, section 1, Pub. No. 54, app. Feb. 11, 1893.



The United States Supreme Court sustained the statute on the ground that it granted absolute immunity to the witness against prosecutions in the Federal or State courts, for the offense to which the testimony or evidence related, and declared the witness, therefore, deprived of his constitutional right to refuse to answer, and again held that self-incriminating testimony or evidence forced from witness under these statutory provisions could not be used against him in any attempted prosecutions arising therefrom.

Brown vs. Walker, 161 U. S. 591, 40 L. Ed. 918.  
Counselman vs. Hitchcock, 142 U. S. 547, 35 L. Ed. 1110.

The so-called Elkins Act (Pub. No. 103, approved February 19, 1903) further provides that "in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence documentary or otherwise, in such proceeding." (Sec. 3.)

The immunity granted by the Act to Regulate Commerce, the Immunity of Witnesses Act, and the Elkins Act, *supra*, may not restrict the operation of the immunity clause in the federal constitution, and unless equally as

broad in their interpretation, such statutes would be void therein as in contravention of such constitutional right guaranteed by the Constitution.

Also see section 860, subs. (a), (b), (c), (d), (e), (f), and (g), Revised Statutes of the United States relating to immunity of witnesses, except in bankruptcy proceedings or in congressional inquiries.

Immunity applies only to natural person, and not to corporate persons. The immunity, however, is limited to the subject of the testimony or evidence.

Hale vs. Henkel, 201 U. S. 43.  
U. S. vs. Price, 96 Fed. Rep. 960.

The compulsion of testimony or evidence before the Commission, is, of course, jurisdictionally limited to the quasi-judicial duties of the Commission in connection with complaints for violations of the Act or investigations by the Commission of matters which have been made the object of complaint, but the amendments of 1910 have so enlarged the authority of the Commission that it may compel such testimony or evidence for any purpose in its enforcement of the provisions of the Act.

Harriman vs. I. C. Com., 211 U. S. 407, 53 L. Ed. 253.

By section 9 of the Act of June 29, 1906, all existing laws pertaining to the attendance of witnesses and the production of evidence, including the compelling of testimony under the Act to Regulate Commerce and acts supplemental thereto, were made to apply in all proceedings competently brought before the Commission under the provisions of the Act to Regulate Commerce.

Harriman vs. I. C. C., 211 U. S. 407, 422.

In the Ellis case, the Supreme Court ruled that the Interstate Commerce Commission was without authority to go into "the whole business of the Armour car lines—a fishing

expedition into the affairs of a stranger for the chance that something discreditable might turn up." Nor has the Commission power to investigate general correspondence and original documents not required to be entered on the books of the carriers.

The authority of the Commission to prescribe methods of accounting and to require reports from the carriers subject to the Act has been upheld as complementary to its power to make general investigations.

Ellis vs. I. C. C., 237 U. S. 434.  
U. S. vs. L. & N. R. R. Co., 236 U. S. 318.  
K. C. S. Ry. Co. vs. U. S., 231 U. S. 423

See also:—

Harriman vs. I. C. C., 211 U. S. 407.  
I. C. C. vs. Baird, 194 U. S. 25.  
I. C. C. vs. Brimson, 154 U. S. 447.

Compare the following cases under the Fourth Amendment to the Constitution of the United States:—

Weeks vs. U. S., 232 U. S. 383.  
I. C. C. vs. Goodrich Transit Co., 224 U. S. 194.  
B. & O. R. R. Co. vs. I. C. C., 221 U. S. 612.  
U. S. vs. Skinner, 218 Fed. Rep. 870.  
Goodrich Transit Co. vs. I. C. C., 190 Fed. Rep. 943.

(5) **Adverse Witnesses.** Either one of the parties to a proceeding may call a witness from the opposite side. Under the liberal practice before the Commission a complainant may place the defendant carrier's officers or agents on the stand because of their personal knowledge of facts pertinent to the complainant's case. Such adverse witnesses are witnesses as to fact, not opinion. It is a very frequent and common practice for the complainant to place the defendant carrier's traffic officials on the witness stand and interrogate them as to railroad transportation and traffic methods and practices.

(6) **Documentary Evidence.** Where relevant and material matter offered in evidence is embraced in a report, tariff, rate sheet, classification, book, pamphlet, written or printed statement, or document of any kind containing other matter not material or relevant and not intended to be put in evidence, such report, etc., in whole, shall not be received or allowed to be filed in a cause on hearing before the Commission or at any time during the pendency thereof, but counsel or other party offering the same shall also present in convenient and proper form for filing a copy of such material and relevant matter, and that only shall be received and allowed to be filed as evidence and made part of the record in such cause; provided to be filed as evidence and made part of the record in such cause; provided however, that, if practicable, such matter may be read and taken down by the reporter and thus made part of the record.

Strict rules of authentication of such documents are not followed by the Commission.

See also, this chapter, sec. 4, sub.—(2), “subpoenas for attendance and testimony of witnesses and the production of documentary evidence.”

(7) **Qualifications and Competency of Witnesses.** The question of the qualifications and competency of witnesses before the Commission is not a very serious one. The very nature of the proceedings removes the possibility of questions of disqualification arising because of infancy, coverture or alienage. However, the general rules applicable to federal witnesses would obtain if question were to be made. The federal rules are simply the general rules as to competency laid down by the statutes of the respective states where the court is held.

It may be safely said that the competency of a witness before the Commission is not interfered with by reason of his interest in the proceedings, his race, color, sex, or religion, but question would arise if insane or convicted of perjury. Under the federal rule a person once convicted of perjury may not be a witness again until such time as the judgment has been reversed.

U. S. Comp. Stats. 1901, section 5392, p. 3653.

As an example of a question of competency of a witness arising before the Commission, it may be noted that the Commission has said that the committees or persons who prepare a classification "have no more authority in its construction than any body else, and they must leave the document, after they have given it to the public, to speak for itself," and, therefore, the maker or makers of a classification would not be competent to testify as to its construction or interpretation.

Hulburt vs. L. S. & M. S. R. Co., 2 I. C. C. R. 122.

**(8) Notice to Produce Documentary Evidence.** A notice to produce documents may be served in proceedings before the Commission in the customary manner prevailing in court practice, but such notice should not be directed to the production of documents not within the judicial notice of the Commission or unnecessarily voluminous records.

Mason vs. C., etc., R. Co., 12 I. C. C. 61.

The Commission may, on its own motion, issue a subpoena for the production of books, papers, documents, but applications by a party to the record in a proceeding before the Commission for a subpoena against a person or party to the proceedings to produce documentary evidence, must set forth in a general way the documents, books, or papers

desired, with a statement that the applicant believes they will be of service in the determination of the case.

If the subpoena is to be directed to a stranger to the record, the application therefor must be verified and a statement made specifying the books, paper, or documents sought and detailing the facts expected to be proved by such documentary evidence.

(9) **Examination of Witnesses—Illustrated.** The manner of examining witnesses before the Commission follows the general court rules with respect thereto, except that no strict rules against leading or direct questions, or the framing of questions, or expressions of opinions by witness, obtain. In the interest of time the Commission watches the examination of witnesses to prevent repetitions or misleading questions, or tactics of delay.

**Verbatim** report is made of all hearings, including the examination of witnesses, statements by the parties or their counsel, and statements, rulings and actions of the Commission.

In the order of examination, witnesses, after being sworn to tell the truth, are first examined by the party, or his counsel, producing the witness, and this is followed by the cross-examination of the adverse side. All witnesses are subject to interrogation by the Commissioners or the examiner conducting the hearing, and the purpose of the Commission is insistently adhered to by examining a witness sufficiently to bring out all the facts necessary for a just determination of the case. The duty of the Commission is even greater than that of a court, in that it is charged with ascertaining all the facts under its power to investigate.

It is, of course, necessary that the witness, before giving his testimony, should be made to state his name, age, occupation, and residence, and it is customary and essential



to show his relation to the case and his general qualifications as a witness upon the subject with regard to which he is called to testify. This method of examination applies to all witnesses produced on behalf of either of the parties.

A brief example is given illustrating the method of examining an oral witness.

JOHN DOE, produced as a witness on behalf of the complainant, being duly sworn, etc., \* \* \* testified as follows:—

#### EXAMINATION IN CHIEF.

Questioned by John Smith, Attorney  
for Complainant.

1. Q. State your name, age, occupation, and residence.  
A. My name is John Doe; I am 41 years of age; I am engaged in the iron and steel manufacturing business; and I reside at 2004 Livermore Street, Philadelphia, Pa.
2. Q. Are you in any way connected with or interested in the Acme Iron & Steel Company, the complainant in this proceeding, Docket No. 1657?  
A. I am.
3. Q. In what manner?  
A. I am the president and general managing officer.
4. Q. The Acme Iron & Steel Company, the complainant, ships what kind of products from its factory in Philadelphia, Pa., and to what points?  
A. Well, it ships its products, which are mainly iron and steel articles in different stages of manufacture, to all parts of the United States, Canada and Mexico, but the bulk of its shipments go to that territory between the Indiana-Illinois state line and the Missouri River.

5. Q. In shipping such of your articles as go into the territory you have just described, over what railroads do you ship them, generally?
- A. Mainly by the Pennsylvania and such of its connections as are necessary to reach the point of destination. \* \* \*

(10) **Objections and Exceptions to the Evidence.** Objections may be made to questions asked of witnesses or evidence sought to be introduced, but they avail nothing, except sometimes to prevent misleading or annoying questions and repetitions, but they afford no basis for exceptions to the evidence, as there is no subsequent proceeding upon the record made by the Commission which may call into question the competency or sufficiency of the evidence heard by the legal or judicial propriety of the rulings made by the Commission, or its examiner, upon the admission of evidence. As objection may be stated and the adverse party asked to explain the purpose of the evidence sought to be introduced by him, but only brutally irrelevant or immaterial matter can be kept out of the record by such an objection. If there is a possibility of the evidence at some future time becoming material or relevant, the Commission will permit its introduction, and should it subsequently prove to be immaterial or irrelevant the Commission would entertain a motion to strike such evidence from the record, but such motion is not of frequent occurrence in actual practice before the Commission.

(11) **Introduction of Documentary Evidence.** Documentary evidence is introduced into the record, subject to the rules governing its nature and preparation and form, *supra*, by either reading into the record, or by introducing the same in evidence as an exhibit in the case. Each par-

ties' exhibits so introduced are either numbered or lettered consecutively as "Complainant's (or defendant's, as case may be) Exhibit No. 1, Freight Expense Bill of July 1, 1911,—Doe," the name of the document and the name of the witness identifying or preparing it being subjoined for identification purposes. Upon their introduction such exhibits should be delivered into the custody of the official reporter in the case.

(12) **Evidence—Burden of Proof.** Technical rules of evidence are not required by the Commission. Generally speaking the burden of proof is upon the complaining party. It is axiomatic that the complainant must prove the issues that he raises by competent testimony or make a **prima facie** case sufficient to require the Commission to investigate the matters complained in the interest of the public. There are exceptions, however, to any hard and fast rule of this nature owing to the peculiar character of some matters which may be the basis of complaint, in that the knowledge thereof may lie wholly within the possession of the carrier, and were the burden not shifted to the carrier to justify its act or its freedom from wrongful act, complaints against such matters would be unavailing.

Dallas Frt. Bureau vs. Mo. etc R. R. Co., 12 I. C. C. R. 427, 433.

In construing the burden of proof in proceedings under sections 1, 2 and 3, the Commission has adhered to established rules of the courts liberally enforced.

See also—"Reasonableness of Rates," *ante* "Discrimination," *ante*.

The burden of proof is on the complainant in the following instance:

- To show carrier has exceeded reasonable standard.
- To show unreasonableness of rate attacked.

To show what reasonable rate should be where reparation is asked in order to determine excess.

To show existence of discrimination under charge of discrimination in use of facilities, and burden on carrier to show justification of the discrimination.

To show necessity for adjustment when attacking rate adjustment of long standing.

1 I. C. C. R. 230, 1 I. C. C. R. 627, and 17 I. C. C. R. 286.

Holmes vs. So. R. R. Co., 8 I. C. C. R. 561.

Richmond Elev. Co. vs. P. M. R. R. Co., 10 I. C. C. R. 629.

Taylor vs. Mo. Pac. R. R. Co., 15 I. C. C. R. 165.

The burden of proof is on the carrier in the following instances:

To show justification when seeking relief under section 4.

To show dissimilar circumstances and conditions under section 4.

To show justification departure from rule of law.

To show justification where there is a departure from equal rates on several branches of the same railroad.

To justify apparent disparity in rates where facts are peculiarly within its knowledge.

To show justification for advance in rate long in effect, which has been presumably profitable to carrier.

To justify through or "joint" rate in excess of sum of intermediates.

To show that lawful rate was applied where charge of misrouting is made.

To show justness and reasonableness of rate advanced or proposed to be advanced after January 1, 1910, involved in any proceeding before the Commission.

Where the pleadings raise questions as to which neither of the parties supplies the Commission, either in the evi-

dence or arguments, with sufficient information to enable it to decide such question understandingly, the Commission will not pass upon such question or questions.

Mich. Buggy Co. vs. G. R. & I. Ry. Co., 15 I. C. C. R. 297.  
 Duluth Log Co. vs. Minn. etc. R. R. Co., 15 I. C. C. R. 627.  
 Act to Reg. Com. (Amd. 1910) section 15.  
 Pac. Coast Lbr. Assn. vs. N. P. R. R. Co., 14 I. C. C. R. 23, 39.  
 8 I. C. C. R. 93, citing Mo. etc. Ry. Co. vs. T. & P. Ry. Co., 31  
 Fed. Rep. 862.  
 6 I. C. C. R. 1; 3 I. C. C. R. 252, 2 I. C. R. 604.  
 4 I. C. C. R. 104, 4 I. C. R. 348.  
 2 I. C. C. R. 604, 2 I. C. R. 431.  
 1 I. C. C. R. 503, 1 I. C. R. 722.

It is the duty of the complainant to aid the Commission in developing the facts.

Quammen & Austad Lumber Co. vs. C. M. & St. P. Ry. Co.,  
 19 I. C. C. Rep. 110, 111.

## § 5. Rules of Evidence.

"None of the technical rules of evidence applies in proceedings before the Commission, in fact, the rules of evidence are of less moment before the Commission than before legislative committees, boards of assessment, or administrative bodies. In every instance the Commission seeks the facts germane to the inquiry, paying little regard to the canons of evidence. How a witness may know the facts, in what manner or by what means he became possessed of the knowledge is immaterial, within reasonable limits. The essential item is the fact or facts, and not the means by which they have been acquired. Upon cross-examination a witness may be asked how he knows to be true what he has stated and the means by which he obtains his knowledge affects the weight of his testimony rather than his competency to testify."

Daish Proced. in I. C. Cases, section 126, p. 143.

It has been held that the common-law rules of evidence apply in the absence of statute generally, but that particu-

lar question with respect to the Commission's practice has never been decided by the courts.

Moore vs. U. S., 91 U. S. 270.

## § 6. Judicial Notice.

The Commission takes in form judicial notice of—

Matters of common knowledge in general,  
Public or private statutes,  
Treaties and rights thereunder,  
Municipal ordinances,  
Foreign laws,  
Legislative journals,  
Proceedings and decisions of courts and State Railway  
Commissions,  
The official decisions and acts of Federal officers,  
Political and Municipal decisions,  
Geographical facts, including location of the several  
railways within the United States and adjacent foreign  
countries,  
The customs and usages generally in practice in rail-  
way management, and  
Railway reports.

From Daish Proced. in I. C. Cases, sec. 127, p. 145.

The Commission also takes judicial notice of all tariffs, contracts, reports or other documents on file with it if they be essential to a case. Such documents need not be formally introduced in evidence, but specific reference should be made to such as it is desired the Commission should take notice of.

In appropriate cases evidence in one case may be used in another.

Boston F. & P. Ex. vs. N. Y. & E. R. R. Co., 4 I. C. C. R. 664.  
Toledo P. Ex. vs. L. S. & M. S. Ry. Co., 5 I. C. C. R. 166 (3).  
Kemble vs. L. S. & M. S. Ry. Co., 5 I. C. C. R. 166 (4) B. M.  
Co. vs. N. Y. etc. R. Co., 14 I. C. C. R. 398.



### § 7. Doctrine of Stare Decises.

The doctrine of *stare decises* or estoppel, is most liberally applied by the Commission if can be said to be applied at all. A complainant is not bound by assertions made in a previous case nor is a defendant estopped from setting up different facts in its defense of two similar proceedings.

Neither is a party estopped from proceeding against the same parties upon substantially the same grounds but in a different capacity from that in which he previously acted.

The Commission "must adhere to its previous conclusion, unless some new facts or changed conditions are brought to its attention, or unless it proceeded upon some misconception in reaching the original decision." The Commission held in **Board of R. Com. vs. A. T. & S. F. R. R. Co.**, 8 I. C. C. R. 304, that "Questions coming before this body are not of a character that the decision in one case is necessarily controlling in all similar cases. Its decision can hardly be said to have the effect of an estoppel, nor is there the same reason to apply the maxim *stare decisis* which exists in courts of law. Conditions continually vary at different times and in different localities. \* \* \* In the absence of some showing that new conditions have intervened or that the effects of the original holdings have been other than were anticipated, we think that that case must control the disposition of this."

The Commission also held that it would treat as binding upon itself a decision by a competent court upon the same set of fact but between different parties. (**Cattle Raisers' Assn. vs. Ft. W. & D. C. R. R. Co.**, 7 I. C. C. R. 513.)

A decision of ruling of the State Commission involving any matter under federal jurisdiction is not conclusive upon the Commission. (3 I. C. C. R. 241, 2 I. C. R. 591.)

See effect of absence of this principle in the deductions drawn in the 1915 Western Rate Advance Case from the existence of lower intrastate rates.

Western Rates Advance Case 1915, 35 I. C. C. Rep. 497.

The doctrine of **res adjudicata**—things adjudicated—is liberally applied in proceedings before the Interstate Commerce Commission. A plea of **res adjudicata** is conclusive as to all that preceded the effective date of the Hepburn amendment. An order with respect to rates is not conclusive beyond the statutory period of two years, nor has a plea of **res adjudicata** any standing as affecting shipments moving subsequent to the decision relied upon.

Natl. Hay Asso. vs. M. C. R. R. Co., 19 I. C. C. R. 34, 37.

Waco Freight Bureau vs. H. & T. C. R. R. Co., 10 I. C. C. R. 22, 24.

See also—Corp. Com., etc. vs. N. & W. Ry. Co., 19 I. C. C. R. 303, 307.

Re Reduced Rates on Returned Shipments, 19 I. C. C. R. 409, 416.

Pabst Brewing Co. vs. C. M. & St. P. Ry. Co., 19 I. C. C. R. 584, 587.

The Commission also holds that only carriers that are before the Commission are bound by findings of the Commission in that case.

Fels & Co. vs. P. R. R. Co., 23 I. C. C. R. 483, 486.

The Commission itself, however, is bound by the decisions of the Supreme Court of the United States, the Commerce Court, and of the Federal Courts in competent cases.

The rule of the Commission in applying the doctrine of **res adjudicata** is best stated by the Commission in the Traugott Schmidt & Sons case, to the effect that while the Commission is not bound by any rule of **stare decisis**, and while its conclusions are not **res judicata**, still when a matter has been fully considered and decided it must be re-

garded as settled, unless it appears from new facts presented that the Commission's former decision or conclusion was wrong.

Traugott Schmidt & Sons vs. M. C. R. R. Co., 23 I. C. C. R. 684, 685.

### § 8. Evidence; General Nature of.

While not all evidence adduced before the Commission is expert or opinion evidence, by far the larger portion is of that nature. Hardly a case can be conceived involving questions of the reasonableness of rates, discriminations, practices of carriers, use of facilities, or failure to make switch connections but what the opinion of the shipper as well as of the traffic, operating and engineering officer of the carrier would be necessary. Of course, expert or opinion evidence is generally predicated on facts given by the witness as a basis for, or in support of, his opinion. The opinion of an ordinary witness is not permitted when it is derived from the statements of others, or is based upon extraneous circumstances.

Cattle Raisers' Ass'n. vs. M. K. & T. R. R. Co., 13 I. C. C. R. 418.

Lawson on Expert and Opinion Evidence, p. 603.

Hearsay evidence may be given before the Commission such as that offered by representatives of associations and other bodies testifying as to effect of certain rates and charges upon the members of such bodies, or the traffic official of a carrier stating the opinions of other carriers' heads upon the same subject.

Daish *Proced. in I. C. Cases*, section 137, p. 155.

Evidence may also be introduced as to customs and usages and their consequent effects, as likewise parol evidence affecting writings introduced in evidence. No parol evidence is allowed to affect classification.

Hulburt vs. L. S. & M. S. Ry. Co., 2 I. C. C. Rep. 122.

### § 9. Elements of Evidence Necessary in Proceedings Under Provision of the Act; Illustrative Cases.

In cases involving unreasonableness of rates, evidence on the following elements may be introduced and considered:

- |  |  |
|--|--|
| 1. Amount of through and local business. | 19. Operating expenses.                        |
| 2. Bonded debt.                          | 20. Other articles consumed.                   |
| 3. Bulk.                                 | 21. Population along the line.                 |
| 4. Character of commodity.               | 22. Proportion to local traffic.               |
| 5. Comparison of rates.                  | 23. Relative reasonableness of rates.          |
| 6. Consequences of rate changes.         | 24. Relative amount of through local business. |
| 7. Competition.                          | 25. Return loads.                              |
| 8. Cost of production.                   | 26. Revenue.                                   |
| 9. Cost of service.                      | 27. Rates, <i>prima facie</i> .                |
| 10. Cost of local business.              | 28. Risk.                                      |
| 11. Distance.                            | 29. Special train rates.                       |
| 12. Dividend on capital stock.           | 30. Storage capacity.                          |
| 13. Empty cars.                          | 31. Unsettling of rates.                       |
| 14. Fixed charges.                       | 32. Use to the public.                         |
| 15. Former rates.                        | 33. Value of freight.                          |
| 16. Geographical situation.              | 34. Volume of business.                        |
| 17. Initial expenses.                    | 35. Weight.                                    |
| 18. Market cost.                         |  |

The Act to Regulate Commerce frequently indicates the nature of the evidence necessary to procure the relief it affords. There can be no set rules as to the precise nature of or kind of evidence necessary in each case arising under the statute. Again, the Act uses terms which it does not

define and their interpretation becomes a necessity in adjusting the facts of a given case to meet such interpretation in order that the relief may operate. In cases where the word "unreasonable" is used in the statute, the adjective force is to qualify the act condemned. It is, however, possible to indicate the general requirements as to evidence under alleged violations of the several provisions of the Act.

**§ 10. Where the Statute Indicates the Nature of the Evidence, it Must be Shown in Cases—**

**(1) To Procure Continuous Carriage.**

That carriers have entered into combination or contract in violation of the provisions of section 7 of the Act;

That contract and its terms; and

That it prevents continuous carriage.

**(2) To Produce the Making of Through Routes and Joint Rates.**

That the carriers have refused or neglected to voluntarily establish;

That no satisfactory route exists, including evidence as to the service, time of movements, thereunder, promptness, delays.

Snyder Ann. I. C. Act, p. 196; of Wentworth; I. C. Law, p. 21.

**(3) Alleging Failure to Make Switch Connections.**

That the defendant is a common carrier subject to the Act (sec. 1).

That application in writing has been made for switch connection by a lateral branch line of railroad or a shipper;

That the complainant, or the applicant if a carrier, has tendered and continues to tender interstate traffic for transportation;

That the physical construction is reasonably practicable and safe;

That there will be sufficient business to justify the construction and maintenance of the switch, including a showing as to the cost thereof.

**(4) To Compel Publication, Filing and Posting of Tariffs.**

That the carrier is subject to the Act;

That the tariff is one that is required to be published, filed and posted; and

That the carrier has failed to do so.

**(5) To Compel Issuance of Receipt of Bill of Lading as Required by Section 20.**

That the carrier handles the traffic involved;

That the traffic is interstate; and

That the carrier fails to issue such receipt or bill of lading as prescribed.

**§ 11. Where the Statute Does Not Indicate the Necessary Evidence.**

**(1) Alleging Failure to Furnish Facilities for Interchange of Traffic.**

That the proposed facilities are reasonable and proper;

That the interests of the roads require the interchange.

(NOTE:—The burden of proof is on the complaining carrier to show that there is a discrimination under the statute. *O. S. L. & U. N. R. Co. vs. N. P. R. R. Co.*, 51 Fed. Rep. 456.)



**(2) Alleging a Violation of the Long and Short Haul Section.**

That the carrier is subject to the Act;

That the carrier charges and receives a greater compensation in the aggregate for the transportation of like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer.

(NOTE:—It needs be noted that the use of the word 'line' in this section is not synonymous with 'railroad'; the use of the word 'line' is significant. Two carriers may use the same road, but each has its separate line.)

**(3) In the Nature of Applications by Carriers for Relief from the Long and Short Haul Section.**

That by reason of competition it is compelled to charge less for the longer than for the shorter distance or else lose its share of the traffic;

The carrier may present every material reason in favor of the application.

(NOTE:—The Commission will, so far as it may be advised, consider the interests of public shippers in granting the relief sought.)

**(4) To Determine the Just and Reasonable Charge to be Paid by the Carrier for the Service Performed by the Shipper.**

What the cost of doing the service of furnishing the Instrumentality is, and the value thereof to the carrier;

That the charge is reasonable (which must be determined from the facts and circumstances of each case).

**§ 12. Unreasonable and Unjust Regulations or Practices.**

A description of the regulation or practice;  
How it affects the complainant, and to what extent;  
That the regulation or practice complained of "affects rates," in order that it be within the jurisdiction of the Commission.

(NOTE:—The showings necessary in cases involving unreasonable or unduly discriminatory rates may apply to regulations and practices in appropriate cases.)

**§ 13. Unjust Discriminations Between Persons.**

That on one of two shipments one person has paid a greater compensation for the services rendered in the transportation of property subject to the Act than another has paid for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions.

(NOTE:—The showing necessarily results from the definition of the term "unjust discriminations" by the courts. Not only must a difference in the compensation paid be shown, but such difference must be shown to be of such an extent as to be unjust and unreasonable, for only unjust and unreasonable discriminations are prohibited by the Act.)

(NOTE:—The "similarity of circumstances and conditions" is a question of fact to be de-

terminated upon the evidence. The term "like kind of traffic" means traffic similar in character and cost of transportation.)

(1) **Involving Reasonableness of Rates.** The most difficult of the Commission's numerous duties is the determination by it of what is a just and reasonable rate. To attempt to fix with certainty the point where a particular rate becomes reasonable or unreasonable *per se* is to enter the domain of academic conjecture where practical results are usually unattainable. A rate is a relative quantity. Inductively, it bears a relation of value to the result sought to be accomplished through it—the revenue of the carrier. So far, no one has been able to determine a base line to and from which an accurate survey may be made of its lack of reasonableness or excess of unreasonableness. Its reasonableness must be determined, if at all, from its relative value to the one who receives it and its extent of burden upon the one who pays it. Economists have long struggled with the question, but the results obtained have thus far been of relatively little value and utterly devoid of certainty. For two decades the Commission has studied and sought to solve, and the courts have endeavored to arrive at its determination, but the exact "reasonable" or "unreasonable" rate *per se* is yet to be defined.

"The difficulty concerning the determination of the reasonableness of a rate is primarily that the question goes into the domain of possibility; the question immediately resolves itself upon the remunerativeness of the rate in the past or whether it will be remunerative in the future. The question is further complicated because of the disagreement between the courts concerning the rules which should govern the making of rates and the traffic officials, who state that the rules enunciated by the courts are not considered in the

making of rates. The question is also further complicated because of the numerous theories of the political economists concerning the proper basis for the adjustment of rates. These theories are divisible into two broad lines, (a) that rates in general should be based upon the cost of transporting the traffic; (b) that rates should be based upon the value of the service (which includes the term 'what the traffic will bear'). The courts lean strongly towards the former theory, while merchants and carriers lean toward the latter."

Daish on *Proced. in I. C. Cases*, section 150, p. 174.

Rates may be unreasonable *per se*, or they may be relatively unreasonable, and such may be the case with either a single rate or a group of related rates. No one has attempted to define a rate which is unreasonable *per se* and to mark out rules by which proof may be had of the fact. The Commission has said regarding a question of the unreasonableness of a rate *per se* (*Mayor, etc., vs. A. T. & S. F. R. R. Co.*, 9 I. C. C. 534) that "the testimony bearing upon it is extremely unsatisfactory as it probably must be in any similar case."

The maximum limit of unreasonableness *per se* would be when the commodity affected by it ceased to move, or never did move, between the points embraced within the rate, and yet should move under the geographical and commercial conditions obtaining. By mathematical process the unreasonable rate *per se* could not be determined for the reason that so many questions of transportation cost, valuation of the carrier's property, and its capitalization, the return on the carrier's investment, the volume of traffic, the length of the haul, and so into a statistical jungle from which the factor of transportation cost, if ever arrived at, will bear little or no relation to the rate. If this difficulty obtains with respect to ascertaining the cost of the trans-

portation under a schedule of rates, how much more perplexing and unsatisfactory would be the result thus obtained for a single rate.

“Rates are relatively unreasonable, either by reason of the classification or by reason of the relation between the commodity rate or the class rate or by reason of an alleged discrimination between localities. Evidence tending to show relative unreasonableness is more available, because immediately there arises the question of comparison, itself an element of reasonableness. The essence of reasonableness of a particular fact is a comparison of that fact with a reasonable fact. One therefore is permitted to compare the rate or classification of the commodity under consideration with other rates and classifications of commodities used for similar purposes, preferably moving in the same volume and upon the same line of railroad, or upon other lines of railroad. The nearer identical the the elements the greater must be the weight of the evidence.”

Contra, see *Am. Asphalt Assn. vs. Unitah R. Co.*, 13 I. C. C. Rep. 196.

In **Smyth vs. Ames**, 169 U. S. 466, the Supreme Court of the United States laid down its basis of calculation as to the reasonableness of a railroad rate:

“We hold, however, that the basis of all calculation as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stocks, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses,

are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

The reasonableness of a rate cannot be based upon the entire traffic, state and interstate of a carrier. The carrier cannot justify unreasonably high rates on intrastate traffic on the ground that it is in that way meeting the losses on its interstate business, nor vice versa. (**S. A. L. R. Co. vs. R. Com.**, 155 Fed. Rep. 792.)

In cases attacking advances in rates, the testimony may take a very wide scope, as in the case of the **Central Yellow Pine Assn. vs. I. C. R. R. Co.**, 10 I. C. C. 505, where the following elements of evidence were considered by the Commission:

- (a) The association, its objects, and the occupations of its members;
- (b) The defendants and their location and business in the transportation of lumber;
- (c) The lumber producing districts involved in the complaint;
- (d) The advance complained of and where effective;
- (e) The rates from several points to several points, the latter being markets;
- (f) The divisions allowed the originating roads and the revenue earned by them;
- (g) The history of the fluctuation in lumber rates;
- (h) The situation of mills for the manufacture of lumber;



- (i) The history of the lumber traffic from the particular producing section;
- (j) The volume of lumber annually shipped from the producing section;
- (k) The amount of the advance per car and its effect in currency on the business of the mills;
- (l) Prices for various cars of lumber at several markets;
- (m) The cost of manufacturing lumber and the capital invested at several mills;
- (n) The depreciation of mill property;
- (o) The increase in price of material, equipment and wages of the defendants, and the wages of mill employees;
- (p) The operating expense of the carriers, including gross earnings, total operating expenses, percentage of operating expenses, earnings, net earnings, net earnings per mile of road and total mileage operated;
- (q) The profit to the carriers under prior rates;
- (r) The capitalization, funded debt, and cost of construction of the carriers including dividends paid by them for a series of years;
- (s) The equipment of the carriers (cars and terminals) for handling traffic;
- (t) The character of car required for the commodity;
- (u) The average loading of cars and the capacity loading; and
- (v) The total lumber tonnage of the United States and a comparison with the tonnage of other commodities heavy in volume.

A typical case of where the question of the reasonableness of a rate on a single commodity is involved between given places, is that of the **Am. Asphalt Assn. vs. Unitah R. R. Co.**, 13 I. C. C. 196, where although deciding the case

almost wholly upon the remunerativeness to the carrier of the property used for the convenience of the public, the Commission considered the following elements:

- (a) The ownership of the defendant carrier;
- (b) The business occupation of the owners of the defendant;
- (c) The occupation of the complainant;
- (d) The character of the commodity, its use, where found, and the method of mining and transportation;
- (e) The reasons for constructing the defendant carrier, as it was constructed for the special purpose of transporting gilsonite;
- (f) The physical characteristics of the country through which the road runs, the method of construction, including grades and curves and its freight equipment;
- (g) That after the construction of the road it secured other freight than for the handling of which it was constructed;
- (h) Whether or not a rate of 50 cents per 100 pounds for a 54 mile haul is inherently extortionate for a low grade commodity;
- (i) The competitive traffic at points along the line of the defendant;
- (j) That the transportation of gilsonite moved only in one direction;
- (k) The original cost of the carrier compared with the cost of reconstruction; and
- (l) Its earnings and expenses showing a net income of about 7 per cent.

The Commission directed its attention to the question of the value of the services to the shipper, in this same case, and said:

"It is often said that the rate depends upon the value of the service to the shipper, and it has been frequently claimed before this Commission that the cost of performing the service by the shipper himself might be taken as a measure of the rate to be charged by the carrier. It is seldom proper to measure the reasonableness of a freight charge by what it would cost the shipper to perform the service himself by other means; for railroads have become a part of a commercial and industrial whole, and must be reckoned as such in considering what may be properly charged for their services."

(2) **Involving the Classification of Freight.** Commodities, undergoing classification for the purpose of determining the rates to be applied, are divided into two classes:

**First:** Similar or substantially the same articles classed in different classes when it is charged that they should be all classed in the same class; and

**Second:** Where it is alleged that a commodity is not properly classified in that it does not bear the proper relation and hence the correct relative rate to articles in the same and other classes.

The articles of the first class were considered by the Commission in the case of the **Stowe-Fuller Co. vs. P. Co.**, 12 I. C. C. 215, where the Commission held that "Classification must be based upon a real distinction from a transportation standpoint; we can find no such distinction between these three classes of brick, which are made of the same material and come out of the same kiln as justifies the difference in rates."

No other evidence is necessary in this first class of cases than to show that the articles in different classes are so near alike, of the same size, loading and the same weight that the carrier is not justified in distinguishing between the commodities in the classification.

The second class of cases calls for more elaborate evidence under the heads to be considered in determining into which class a particular commodity should be placed. The Commission has said: "Freight classification is based upon the relation which commodities bear to each other in such respects as character, use, bulk, weight, value, tonnage or volume, risk, cost of carriage, ease of handling and controlling conditions caused by competition." (**Proctor & Gamble Co. vs. C. H. & D. Ry. Co.**, 9 I. C. C. 440.)

The scope of the evidence and range of heads to which testimony may be directed in this class of cases, is typically illustrated in the case of the **Natl. Hay Assn. vs. L. S. & M. S. Ry. Co.**, 9 I. C. C. 264, where the Commission considered the following elements:

- (a) The complaining association, its incorporation, its membership, their occupations and the relation which they individually bore to the producer and consumer of the article involved;
- (b) The defendants, the territory covered by their classification, and that classification was changed by the concerted action of them;
- (c) The history of the classification in the particular territory, with a description of the several classes, and how a classification affects rates;
- (d) The volume of tonnage used at several centers, and the amount of hay imported for a series of years prior and subsequent to the date on which the classification complained of took effect;
- (e) The change per unit of sale of the commodity as effected by the change in the classification;
- (f) The localities producing hay for transportation and the localities under necessity of purchasing same;

- (g) The comparison of the classification under consideration with the classifications in other parts of the country;
- (h) The method of baling hay for transportation and the carting thereof;
- (i) The volume and value of the hay crop of the country for a number of years and of particular localities;
- (j) The prices for a series of years in a stable market, and the cost of marketing;
- (k) The purpose for which hay is used, and whether or not other articles may be substituted for it;
- (l) The comparison of the articles in the same present class with hay and the articles in the class in which hay formerly was;
- (m) The articles and minimum weights which were advanced by the same classification as changed the classification of hay;
- (n) The total charge on hay transported in the United States;
- (o) The element of risk to the carriers;
- (p) The detention of cars in loading and unloading hay and a comparison of this detention with cars laden with other commodities;
- (q) The minimum weight provided in the classification and the capability of heavier loading;
- (r) A comparison of the movement of grain and grain products with that of hay;
- (s) Average revenue per car for hay and other commodities; the earnings per car mile and the dead weight per car of hay and grain;
- (t) The ability of the carriers at all times to carry all commodities offered including a possible preference given to good paying freight;

- (u) The rates per ton per mile from several shipping stations to a stable market;
- (v) The defense that there had been an increase in price of lumber and other articles used in railway construction, and maintenance and in labor;
- (w) The average earnings per mile of line in the territory covered by the classification, with a consideration of the average per ton per mile rate for the United States for a series of years; and
- (x) The earnings of the several carriers and the rate of interest paid by them for a series of years.

**(3) Involving Undue or Unreasonable Prejudice or Disadvantage of Localities.**

The relative geographical location;

The number and character of carriers; and

Water competition at the complaining place as compared with place alleged to have undue preference or advantage.

(NOTE:—The same evidence as might be submitted in case involving unreasonableness of rates may be submitted in appropriate cases in this class.)

**(4) Involving Undue Prejudice or Disadvantage of Particular Kinds of Traffic.**

The comparing of all of the supposed advantages and preferences of one class or kind of traffic to all the supposed disadvantages or prejudices of the other kind of traffic.

**(5) Involving Reparation.**

The evidence necessary to support any of the cases herein referred to where reparation may be a portion of the relief sought;



The amount of damage to the complainant;

In cases involving unreasonable rates the amount of the award is computed on the difference between the rate charged and the rate found to be the reasonable one on shipments which actually moved;

In cases involving discriminations and prejudice and advantage, the usual rules respecting evidence in cases seeking unliquidated damages, with such modifications as the nature of the proceeding warrants, will serve as guides. (Note.)

(NOTE:—The elements of evidence required in particular cases included in pars. (a) to (m) of sec. 13, as indicated, are an epitomy of sec. 150, Daish Proced. in I. C. Cases, pp. 167 to 179, inclusive, with quotations.)

#### § 14. Investigations by the Commission.

Section 12 of the Act vests in the Commission the authority "to inquire into the management of the business of all common carriers subject to the provisions of this Act, and (the Commission) shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created;" and the Commission is "authorized and required to execute and enforce the provisions" of the Act.

Section 21 requires the Commission on or before the first day of December in each year to make a report, which shall be transmitted to Congress, and which shall contain such information and data collected by the Commission as may be considered of value in the determination of

question connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.

Section 13 of the Act, as amended June 18, 1910, vests in the Commission the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had, excepting orders for the payment of money.

Thus it is apparent that the powers and authority conferred upon the Commission to proceed in general investigations instituted on its own motion are of the very broadest scope, but the question has arisen and been passed upon by the Supreme Court of the United States of where the limit to such powers is reached—whether the Commission may inquire into matters and things beyond the scope of such evidence as would necessarily be included in a specific breach of the statute. Upon the face of it, the power of the Commission, unless judicially limited, would be vastly in excess of the powers of any court of the country.

As a creature of statute, the Commission must find its powers and authority within the specific terms of the legislative act creating it and the scope of its inquisitorial authority cannot exceed the specific investiture of the statute.

In a general investigation inquiring into the consolidation, or corporate combination, of several competitive and non-competitive carriers subject to the Act, one Edward

H. Harriman was directed by the Commission to testify relative to his personal ownership of stock and securities in such corporate carriers, which the witness declined to do. Upon the appeal of the case to the Supreme Court of the United States, reviewing the action of the federal court in enforcement proceedings, it was held that the Commission's authority in the general investigations provided for in the statute was limited to the gathering of such evidence as would enable the Commission to "perform the duties and carry out the objects for which it was created," or to such evidence as would be involved in complaints alleging specific violations of the Act, and that the range of matters subject to such general investigations by the Commission should not exceed those specific matters "that might be made the object of a complaint."

The court said—

"The contention of the Commission is that it may make any investigation that it deems proper, not merely to discover any facts tending to defeat the purposes of the Act of February 4, 1887, but to aid it in recommending any additional legislation relating to the regulation of commerce that it may conceive to be within the power of Congress to enact; and that in such an investigation it has power, with the aid of the courts, to require any witness to answer any question that may have a bearing upon any part of what it has in mind. The contention necessarily takes this extreme form, because this was a general inquiry started by the Commission of its own motion, not an investigation upon complaint, or of some specific matter that might be made the object of a complaint. \* \* \*

"The Commission it will be seen is given power to require the testimony of witnesses 'for the purposes of this Act.' The argument for the Commission is that the purposes of the Act embrace all the duties that the Act imposes and the powers that it gives

the Commission; that one of the purposes is that the Commission shall keep itself informed as to the manner and method in which the business of the carriers is conducted, as required by section 12; that another is that it shall recommend additional legislation under section 21, to which we shall refer again, and that for either of these general objects it may call on the courts to require any one whom it may point out to attend and testify if he would avoid the penalties for contempt. We are of the opinion on the contrary that the purposes of the Act for which the Commission may exact evidence embrace only complaints for violation of the Act, and investigations by the Commission upon matters that might have been made the object of complaint. As we already have implied the main purpose of the Act was to regulate the interstate business of carriers, and the secondary purpose, that for which the Commission was established, was to enforce the regulations enacted. These in our opinion are the purposes referred to; in other words the power to require testimony is limited, as it usually is in English-speaking countries at least, to the only cases where the sacrifice of privacy is necessary—those where the investigations concern a specific breach of the law.

“That this is the true view appears, we think, sufficiently from the original form of section 14. That section made it the duty of the Commission, ‘when-ever an investigation shall be made’ to make a report in writing, which was to ‘include the findings of fact upon which the conclusions of the Commission are based, together with its recommendations as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and the findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found.’ As this applied, in terms, to all investigations, it is plain that at that time there was no thought of allowing witnesses to be summoned except in connection

with a complaint for contraventions of the Act, such as the Commission was directed to 'investigate' by section 13, or in connection with an inquiry instituted by the Commission, authorized by the same section, 'in the same manner and to the same effect as though complaint has been made.' Obviously such an inquiry is limited to matters that might have been the object of a complaint.

"The plain limit to the authority to institute an inquiry given by section 13, and the duty to make a report with findings of facts, etc., in the section next following, with hardly a word between, hang together, and show the purposes for which it was intended that witnesses should be summoned. They quite exclude the inference of broader power from the general words in section 12, as to inquiring into the management of the business of common carriers, subject to the provisions of the Act, the Commission keeping itself informed, etc. They equally exclude such an inference from section 21, the other section on which most reliance is placed. That, as it now stands, requires an annual report, containing 'such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.' Act of March 2, 1889.

"It is true that in the latest amendment of section 14, findings of fact are required only in case damages are awarded. Act of June 29, 1906, c. 3591, section 3. But there is no change sufficient to effect the meaning of the words in section 12, as already fixed. By virtue of section 21 the power exists to summon witnesses for the purpose of recommending legislation, we hardly see why, under the same section, it should not extend to summoning them for the still vaguer reason that their testimony might furnish data considered by the Commission of value in the determination of questions connected with the regulation of



commerce. If we did not think, as we do, that the Act clearly showed that the power to compel the attendance of witnesses was to be exercised only in connection with the quasijudicial duties of the Commission, we still should be unable to suppose that such an unprecedented grant was to be drawn from the counsels of perfection that have been quoted from sections 12 and 21. We should not believe on the strength of other than explicit and unmistakable words that such autocratic power was given for any less specific object of inquiry than a breach of existing law, in which, and in which alone, as we have said, there is any need that personal matters should be revealed.

"In sections 15 and 16 are further provisions for the enforcement of the Act, not otherwise material than as showing the main purpose that Congress had in mind. The only other section that is thought to sustain the argument for the Commission is section 20, amended by Act of June 29, 1906, c. 3591, section 7. This authorizes the Commission to require annual reports from all the carriers concerned, with details of what is to be shown, to which the Commission may add in certain particulars, and further 'to require from such carriers specific answers to all questions upon which the Commission may need information.' The Commission may require certain other reports, and is to have access to all accounts, records and memoranda. The section now deals at length with this matter and how accounts shall be kept and the like. It seems to us plain that it is directed solely to accounts and returns, and is imposing a duty on the common carrier only from whom the returns come.

"All that we are considering is the power under the Act to Regulate Commerce and its amendments to extort evidence from a witness by compulsion. What reports or investigations the Commission may make without that aid but with the help of such returns or special reports as it may require from the carrier, we need not decide. Upon the point before us we



should infer from the later action of Congress with regard to its resolution of March 7, 1906, 34 Stat. 823, directing the Commission to investigate and report as to railroad discrimination and monopolies in coal and oil, that it took the same view that we do. For it thought it advisable to amend that resolution on March 21 by adding a section giving the Commission the same power it then had to compel the attendance of witnesses in the investigation ordered. 34 Stat. 824. The mention of the power then possessed obviously is intended simply to define the nature and extent of the power by reference to section 12 of the original Act. The passage of the amendment indicates that without it the power would be wanting. The case is not affected by the provision of section 9 of the Act of June 29, 1906, c. 3591, section 9, 34 Stat. 595, extending the former Acts relating to the attendance of witnesses and the compelling of testimony to 'all proceedings and hearings under this Act.' If we felt more hesitation than we do, we still should feel bound to construe the statute not merely so as to sustain its constitutionality but so as to avoid a succession of constitutional doubts, so far as candor permits."

The orders of the Commission are of two kinds—final and interlocutory. A final order is concurrent with the conclusions of the Commission as expressed in its opinion. An interlocutory order is an order entered by the Commission during its pendency and before final decision. Such orders are generally in the nature of permissions to intervene, requiring answer, taking depositions, fixing times for hearing and argument.

A final order of the Commission is one passed after or concurrent with opinion rendered in the case. Such orders are not final in the sense that no other proceedings can be predicated thereon.

Farmers L. & T. Co. vs. No. Pac. R. R. Co., 83 Fed. Rep. 249.

An order by the Commission for the payment of money has not the judicial efficacy of an order, decree or judgment of a court, is not enforceable by process, nor can it become a lien upon the property of a defendant.

Washer Grain Co. vs. Mo. Pac. R. R. Co., 15 I. C. C. Rep. 147, 155.

The Commission's orders may be for the purpose of dismissing a petition, granting the different kinds of relief provided for by the Act, and for the enforcement of the provisions of the Act. Its orders are also administrative and quasi-judicial—an order governing the future action of a carrier is an administrative one, whereas an order for damages is judicial in its nature.

As to petitions dismissed by the Commission without prejudice, see "Procedure after Order of Commission," *post*.

For Administrative and General Orders of Commission, see "Administrative Orders," *post*.

The Commission's orders may deal with any of the matters and things embraced within the jurisdiction of the Act, such as rates, practices, through routes, fixing reasonable rates and practices, classifying property, furnishing of facilities, requiring switch connections, publication, filing and posting of tariffs, awarding reparation, etc.

(1) **When Orders Become Effective.** Except orders for the payment of money, all orders of the Commission, under the provisions of the Act, take effect within such reasonable time as the Commission may prescribe therein, but not less than 30 days from the date of their entry.

Act to Regulate Commerce, section 15.

(2) **Duration of Orders.** All orders of the Commission, except orders for the payment of money, or unless suspended, modified or set aside by the Commission or suspended or set aside by a court of competent jurisdiction, continue in force and effect for such period of time, not

exceeding two years, as the Commission shall prescribe in its order.

Same—section 15. Prior to Amendment of 1906, orders of the Commission operated indefinitely unless otherwise specified in the order.

(3) **Service of Orders of Commission.** Every order of the Commission is forthwith served upon the designated agent of the carrier in the city of Washington, D. C., or in such other manner as may be provided by law.

Act to Reg. Com., section 16. Previous to Amendments of 1910, service was had by mailing copy of order to any one of the principal officers or agents of the carrier. Service is now on designated agent in the District of Columbia.

(4) **Modification or Suspension of Order of Commission.** The Commission is authorized to suspend or modify its order upon such notice and in such manner as it shall deem proper.

(5) **Compliance with Orders of Commission.** The Act makes it "the duty of every common carrier (subject to the Act), its agents and employees, to observe and comply with such orders so long as the same shall remain in effect."

Act to Regulate Commerce, section 16.

The carrier, its officers, representatives, or agent, or its receiver, trustees, lessee, or the agent of either, who knowingly fails or neglects to obey any order made under the provisions of section 15 of the Act is punishable by a fine by forfeiture to the United States of the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation, each day shall be deemed a separate offense.

Act to Regulate Commerce, section 16.

Section 15 orders are to cease and desist from charging certain rates or enforcing certain practices, and fixing rates or practices **in lieu** thereof.

**(6) When Final Order May be Entered by Commission.**

The Commission can only issue a final order after complaint has been filed, examination into the facts with full opportunity to the defendant carrier to be heard, and then such final order should not exceed in scope the relief sought by the complaint. In the event of a case involving questions of public importance where other parties than those of record will be affected by the order, the Commission will cause the necessary proceedings to follow to permit of the benefits or restrictions of such order being equitably distributed as to all affected thereby.

After full investigation, instituted upon its own motion, and full examination into the facts and conditions appertaining to the matter under inquiry, the Commission may make and enforce an order in the same manner and with the same effect as if complaint had been first duly made.

Act to Regulate Commerce, section 14.

**(7) Where Order of Commission Fails to Specify its Duration.** Where an order is made by the Commission relating to rates and the times within which they shall remain in force is omitted, such an order will remain in effect for the 2-year period provided by the statute.

N. Y. C. & H. R. R. Co. vs. I. C. C., 168 Fed. Rep. 131.

**(8) When Final Order Entered by Commission.** While the orders of the Commission are never printed with the published decisions as they appear in the Interstate Commerce Commission reports, final orders are generally prepared and handed down with the opinion as a part of it. This is not a requirement, but the general practice on the part of the Commission.

See Vol. 12, Lawyers' Co-oper. Pub. Co.'s Ed. I. C. C. Reports.

The orders of the Commission in a few instances, will be found in Volume 12 of the Interstate Commerce Com-

mission Reports published by the Lawyers' Co-operative Publishing Company Edition.

(9) **Cases in Which Orders Will not be Made.** Final or administrative orders will not be made by the Commission in cases—

Where the defendant carrier has conceded the relief asked;

Where issues are simply made without proof by either party;

Where defendant carrier's answer satisfies the complainant;

Where cause of complaint has been removed by substitution of party; and where inequality of rates has been corrected.

M. & J. Union vs. M. & St. L. R. R. Co., 1 I. C. C. R. 227.

Leonard vs. U. P. R. R. Co., 1 I. C. C. R. 185.

Jackson vs. St. L. A. & T. R. R. Co., 1 I. C. C. R. 184.

Boyer vs. C. O. & S. W. R. R. Co., 7 I. C. C. R. 55.

N. O. C. Ex. vs. L. & C. R. R. Co., 4 I. C. C. R. 694. See also 6 I. C. C. R. 335.

(10) **Waiver of Statutory Requirement Relating to Filing of Tariffs in Orders Fixing Reasonable Rates.** While the statute permits the Commission's orders to become effective in thirty days' time, it has become customary for the Commission to make its orders effective in 45 days from their entry, generally. This is designed to afford the carrier an opportunity to publish and file a tariff in accordance with the order, but in necessary instances the Commission permits the new rates to be filed and become effective upon less than the statutory notice.

Act to Regulate Commerce (Amd. 1910), section 6—gives the Commission authority in its discretion, and for good cause, to allow changes in rates upon less than the statutory notice.

Act to Regulate Commerce (Amd. 1910), section 14.

Rice vs. St. L. S. W. R. Co., 5 I. C. C. R. 660.

Ocheltree G. Co. vs. C. R. I. & P. R. R. Co., 13 I. C. C. R. 238.  
Time during which rate should remain in effect was not required in Bunch vs. C. R. I. & P. R. R. Co., 13 I. C. C. R. 377.

**(11) Pendency of Suit in Court Does not Prevent Order Being Entered by Commission in Proceedings Pending Before it.** The pendency in court of an action involving similar questions, will not be deemed sufficient reason by the Commission to decline to make an order in a case pending before it, but leave will be given to either party to apply for modification of the order should it be necessitated by the decision of the court when rendered in such pending suit.

Keith vs. K. C. R. R. Co., 1 I. C. C. Rep. 189.  
Bishop vs. Dural, 3 I. C. C. Rep. 128.

**(12) Commission will not Enter Order Where Carriers, not Made Parties, Have a Right to be Heard.** In a case where certain carriers are necessarily affected by any order granting the relief sought, and would have a right to be heard, but are not made parties, the Commission will make no order.

Poughkeepsie Iron Co. vs. N. Y. N. H. & H. R. R. Co., 4 I. C. C. Rep. 195.

**(13) Commission not Estopped from Making Order Because of Having Passed Upon Subject in Former Case.** The authority of the Commission is not at an end simply because it has previously passed upon the same question.

Cattle Raisers' Assn. vs. C. B. & Q. R. R. Co., 11 I. C. C. R. 277.

**(14) Orders for the Payment of Money.** Orders for the payment of money by way of reparation usually become effective in about 45 days from the date of their entry, and are not subject to the time limit provided for in section 15 of the Act. These reparation orders gener-



ally require payment to be made on or before a date fixed therein.

An order for reparation must be based upon findings of fact which must be returned by the Commission in cases where reparation is asked.

See also:—"Damages," ante.

**(15) Purpose of Statutory Period Before Order Becomes Effective.** The Act affords the defeated carrier 30 days' time, before an order entered against it can become effective, in which to determine whether it will comply with or contest the order in the courts as provided for in the statute.

**(16) Order May be Issued for Partial Relief.** If the defendant carrier satisfies but a portion of the complaint, an order will be entered by the Commission as to the remainder of the relief sought.

**(17) Commission May Fix Time During Which Relief Conceded Shall Prevail.** In a case where the defendant carrier satisfies a complaint brought by changing the rate complained of, the Commission required the new rate to remain in effect for two years.

**(18) Order May be Composite One.** "The order may be in a sense a composite one, for it may grant relief as against all defendants or as against some, and dismiss as to others, or it may command several things to be refrained from or to be done."

Daish on *Proced.* in I. C. Cases, section 124, p. 139, citing *Rau vs. P. R. R. Co.*, 12 I. C. C. Rep. 199.

**(19) Orders of Commission Dismissing Complaints or Proceedings.** The Commission may for sufficient reasons, such as the failure of the complaint to state a cause of action under the provisions of the Act, or invoking relief not afforded by the Act or not adaptable to the facts and

conditions alleged, order a petition dismissed outright, or it may order the petition dismissed without prejudice.

In ordering petitions dismissed without prejudice, the Commission may, as in the case of *Johnston-Larmier D. G. Co. vs. W. R. Co.*, 12 I. C. C. R. 51, order the petition "dismissed without prejudice," or, as in the case of *Harrell vs. M. K. & T. R. Co.*, 12 I. C. C. R. 27, 28, it may order the petition "dismissed without prejudice to the right of the complainant or any other person to file complaint alleging the unreasonableness of the rate involved herein, in the event such rate shall become of actual consequence to shippers and consignees."

A broad rule was put forward in *Mobile vs. Kimball*, 102 U. S. 691, to the effect that if the petitioner could obviate the defects in the pleading or evidence, the order dismissing the case could not operate to stop the complainant from claiming the same relief, but basing his complaint upon different allegations of fact.



## CHAPTER VIII.

### PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION (Continued).

#### ADMINISTRATIVE AND GENERAL ORDERS OF THE COMMISSION.

- § 1. Orders of the Commission.
  - (1) Rehearings, Modification of Orders, etc.
  - (2) Procedure after Granting of Final Order of Commission.
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- § 2. Where Carrier Fails to Obey Order of the Commission.
- § 3. Hearings Involving Reasonableness of Rates Given Preference.
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- § 5. Commission Required to Make Reports of Investigation.
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- § 7. Complaints may not be Dismissed Because of Complainant's Failure to Show Damage.
- § 8. Informal Complaints.
- § 9. Effect of Administrative Orders of the Commission as General Orders.
- § 10. Publication of Reports of Investigations, Decisions, Orders, and Rulings of the Commission.
- § 11. Correspondence with the Commission and Subjects thereof.
- § 12. Carriers Required to Designate Agent for Purposes of Service of Notices.
- § 13. Service Upon Agent of Carrier.
- § 14. Notices to Satisfy Complaints.
- § 15. Cases at Issue.
- § 16. Hearings.
- § 17. Briefing Cases.
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## CHAPTER VIII.

### PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION.

#### ADMINISTRATIVE AND GENERAL ORDERS OF THE COMMISSION (Continued).

##### § 1. Orders of the Commission.

(1) **Rehearings, Modification of Orders, etc.** Section 16a, added to the Act by the amendment of June 29, 1906, provides "that after a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted, the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original



determination, shall be subject to the same provisions as an original order."

In furtherance of the operation of the statutory right to seek rehearing of a cause before the Commission, it has promulgated the following rule:—

Rules of Practice of I. C. C., Rule XV.

"Applications for reopening a proceeding after final submission, or for rehearing, or reargument after decision, must be by petition stating specifically the grounds relied upon, and copies thereof must be served by the party filing the same upon all opposing counsel who appeared at the hearing or on brief. Application for rehearing that part of any case relating to reparation or other damage for past injuries must be filed with the Commission within 60 days after service of the order therein.

"If such application be to reopen the proceeding for further evidence, the nature and purpose of such evidence must be briefly stated, and the same must not be merely cumulative. If the application be for a rehearing, the petition must specify the matters claimed to be erroneously decided, with a brief statement of the alleged errors. If any order of the Commission is sought to be reversed, changed, or modified on account of facts and circumstances arising subsequent to the hearing, or of consequences resulting from compliance therewith, the matters relied upon by the applicant must be fully set forth."

There is no such procedure known in the Commission practice as an appeal from its decision or order. Only the defendant carrier, if defeated, can proceed in review of the Commission's order in a court. The complainant, if not satisfied with or defeated by the order of the Commission, can have no such review by the courts of the Commission's action. If dissatisfied with the original decision, order, or requirement of the Commission, either of the parties

may petition in writing for a rehearing of the case. Such a petition must be directed to the "discretion of the Commission" and apply either for a reopening of the case after final submission, or for a hearing after decision "in the nature of a reargument to correct alleged errors of findings of fact or conclusions of law."

Daish *Proced. in I. C. Cases*, section 152, p. 182.

If the application is intended for the purpose of reopening the case for additional evidence, the petition must show **prima facie** that material testimony has been overlooked or misapprehended, and the nature and purpose of the new evidence sought to be presented. Such a petition should be verified.

Rice, R. & W. vs. W. N. Y. & P. R. R. Co., 3 I. C. C. R. 87.

Where the petition is made for rehearing in the nature of reargument, it must specify the errors in the conclusions reached by the Commission as would be done in a court action. Such a petition would be in the nature of a bill of exceptions, but instead of operating as general exceptions to evidence, as such exceptions avail nothing before the Commission, it purposes to show to the Commission its errors in receiving incompetent or impertinent evidence or rejecting competent and pertinent evidence, the consideration of either of which would necessarily affect the decision of the Commission rendered. The statute recognizes the possibilities of instances arising where the acceptance of incompetent or the rejection of competent and pertinent evidence might affect the conclusions and action of the Commission, or where conditions and circumstances arise subsequent to the decision and order in a case which would make the continued operation of the Commission's order repugnant to justice or to the statute

itself, or where the Commission arrived at a misapprehension of the facts and a consequently erroneous decision and order, but in order that the right of rehearing should not be indulged perniciously or to create unnecessary delays, its exercise is confined to a *prima facie* showing of facts or grounds pointing to the error in the Commission's action and manifesting the merit of the exceptions taken.

If the new or additional evidence as set up in the petition for rehearing has merely the effect of being cumulative of the evidence in the original proceeding, or it is apparent that "no argument of counsel upon the evidence could change the result," the application for rehearing will be denied.

Proctor & Gamble Co. vs. Cinn., etc., R. R. Co., 4 I. C. C. R. 443.

If the petition for rehearing contains merely allegations of error in the findings of fact and is not supported by proof of new facts or by setting up facts already in evidence showing *prima facie* that there was such error, it will be dismissed.

Riddle, etc., Co. vs. P. & L. E. R. R. Co., 1 I. C. C. R. 490.

Where a case has been decided, instead of permitting others than the parties of record to reopen the case, a new and separate proceeding is brought and in that subsequent case evidence is developed to show the conclusion of the Commission in the former case erroneous, the Commission will correct its previous decision. The doctrine of *stare decisis* will not be permitted to estop the subsequent proceeding, although a rehearing of the former case will not obtain.

Re Produce Exchange, 2 I. C. C. R. 588.

In a case involving a question of general public interest, the Commission, in its discretion, may reopen it to permit of a more extended investigation.

Rice R. & W. vs. W. N. Y. & P. R. R. Co., 3 I. C. C. R. 87.

The Commission will not permit a rehearing unless it is satisfied from the showing made in the petition therefor that such rehearing would result in a change in the action already taken by the Commission.

Riddle vs. Pitts., etc., R. R. Co., 1 I. C. C. R. 490, 1 I. C. R. 773.

Conditions arising subsequent to the dismissal of proceedings, may so change and alter the necessity for rate adjustments that a reopening and rehearing of the case should justly and reasonably be made.

Rice, R. & W. vs. W. N. Y. & P. R. R. Co., *supra*.

If the additional evidence set up in the petition for rehearing would warrant a different conclusion from that reached by the Commission, the rehearing will be granted.

Bates vs. Penn. R. R. Co., 4 I. C. C. R. 281, 3 I. C. R. 296.

It may be generally stated, however, that where the rehearing sought asks merely for a rediscussion of the facts and law previously considered by the Commission—but simply alleging that a different conclusion should have been reached on the same facts—it will be denied.

Myers vs. Penna. Co., 3 I. C. C. R. 130, 2 I. C. R. 544.

The Act itself forbids the granting of a rehearing to operate as a stay or postponement of the enforcement of any order made by the Commission unless it shall so direct.

Act to Regulate Commerce (Amd. 1910), section 16a.

Section 15 of the Act provides that "all orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time \* \* \*

as shall be prescribed in the order of the Commission unless the same shall be suspended or modified or set aside from the Commission." The Commission has many times exercised this prerogative, but more frequently in extending the time for the taking effect of its orders, although it has seen fit to modify material portions of orders, both before and after their taking effect.

Prior to 1906 the Act did not specifically authorize rehearings, but the Commission permitted them when necessary.

(2) **Procedure After Granting of Final Order of Commission.** A final order made by the Commission, either granting relief or dismissing the proceedings, does not leave the complainant and defendant upon a basis of equality so far as subsequent proceedings are concerned. True, either party may apply for a rehearing, but the complainant has no original right of appeal or review after he has exhausted his rights before the Commission and a negative order has been made against him. The defendant, on the other hand, is permitted to bring suit in the courts to enjoin, set aside, or annul the order of the Commission, and such a proceeding is deemed an original action with the Commission made respondent thereto and substituted for the complaining party in the original proceedings before the Commission. If the carrier fails to obey the order of the Commission, the Commission may apply to the courts for enforcement of its order. In either of these proceedings—the action by the defendant to enjoin, set aside, or annul the order, or the application by the Commission for the enforcement of the order—the original complainant before the Commission, or communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Commission, or in any suit relating to the action of the Commission, may

intervene in such proceeding at any time after the institution thereof, and prosecute, defend, or continue such proceeding. Such intervening parties must be represented by counsel under such regulations as are now permitted in similar circumstances under the rules and practices of Equity Courts of the United States.

(3) "**Shipper's Right of Appeal.**" While, as stated in the last preceding paragraph, the complainant in a proceeding before the Interstate Commerce Commission has no original right of appeal from or review of orders of the Commission refusing to give complainant the relief sought by him, there are certain technical phases of the question which should be carefully inquired into, and the proper distinguishment rigidly drawn between those cases holding the courts without jurisdiction to annul or enjoin orders of the Commission and the recent cases, notably the **Tap Line Cases**, the **Inter-Mountain Rate Case**, and the case of **McLean Lumber Company et al. vs. I. C. C.** (Special Court of Review sitting in 1916). A negative order by the Commission in terms may not be negative in effect, but on the contrary affirmative in sense because it refuses that which the statute in affirmative terms declares should be granted if the prescribed conditions existed.

In the **Proctor & Gamble** and the **Hooker** cases, the Supreme Court of the United States held that there was no jurisdiction for a judicial annulment and enjoinder of negative orders of the Commission which merely refused to give petitioners the relief sought by them, but the same court in the **Tap Line** cases distinguished between what might be an entirely negative order of this character and one which in another sense might be affirmative in character and therefore reviewable by the courts. The same



jurisdictional grounds were sanctioned by the Supreme Court of the United States in the **Inter-Mountain Rate** cases.

- Tap Line Cases, 234 U. S. 1, 22.
- Inter-Mountain Rate Cases, 234 U. S. 476, 490.
- Proctor & Gamble vs. United States, 225 U. S. 282.
- Hooker vs. Knapp, 225 U. S. 302.
- Interstate Commerce Commission vs. Union Pac. Co., 222 U. S. 541.
- Interstate Commerce Commission vs. Ill. Central R. R. Co., 215 U. S. 452.
- Postal Telegraph Co. vs. Adams, 155 U. S. 688, 696.

In the **Union Pacific** case, the Supreme Court of the United States, in addressing itself to the question of judicial review of the orders of the Interstate Commerce Commission said: "There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance and not the shadow, determines the validity of the exercise of the power. **Interstate Commerce Commission vs. Illinois Central**, 215 U. S. 452, 470, 54 L. Ed. 280, 30 Sup. Ct. 155; **Southern Pacific vs. Interstate Commerce Commission vs. Northern Pacific**, 216

U. S. 538, 544 L. Ed. 608, 30 Sup. Ct. 417; **Interstate Commerce Commission vs. Alabama Midland**, 168 U. S. 144, 174, 42 L. Ed. 414, 18 Sup. Ct. 45.”

“In determining these mixed questions of law and facts, the Court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether on like testimony, it would have made a similar ruling. ‘The findings of the Commission are made by law *prima facie* true, and this Court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience.’ **Illinois Central vs. I. C. C.**, 206 U. S. 441, 51 L. Ed. 1128, 27 Sup. Ct. 700. Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order.”

The Court referred to **Pennsylvania Company vs. United States**, decided February 23, 1915, where the Court said:

“If the order made by the Commission does not contravene any constitutional limitation and is within the constitutional and statutory authority of that body, and not unsupported by testimony, it cannot be set aside by the courts, as it is only the exercise of an authority which the law vests in the Commission. **Interstate Commerce Commission vs. Delaware, Lackawanna and Western R. R. Co.**, 220 U. S. 235, 251, 55 L. Ed. 448, 31 Sup. Ct. 392; **Los Angeles Switching Case**, 234 U. S. 294, 311, 58 L. Ed. 1319, 34 Sup. Ct. 814; **Houston and Texas Ry. vs. United States**, 234 U. S. 342, 359, 58 L. Ed. 1341, 34 Sup. Ct. 833.”

In *Interstate Commerce Commission vs. Illinois Central Railroad Company*, *supra*, the Supreme Court having under consideration the same question, said:

"The statute endowing the Commission with large administrative functions, and generally giving effect to its orders concerning complaints before it without exacting that they be previously submitted to judicial authority for sanction, it becomes necessary to determine the extent of the powers which courts may exert on the subject. Beyond controversy, in determining whether an order of the Commission shall be suspended or set aside, we must consider; a, all relevant questions of constitutional power or right; b, all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and, c, a proposition which we state independently, although in its essence it may be contained in the previous one, viz., whether, even although the order be informed within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it, in truth, to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. *Postal Telegraph Co. vs. Adams*, 155 U. S. 688, 698, 39 L. Ed. 311, 15 Sup. Ct. 360. Plain as it is that the powers just stated are of the essence of judicial authority, and which, therefore may not be curtailed, and whose discharge may not be by us in a proper case avoided, it is equally plain that such perennial powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order upon our conception as to whether the administrative power has been wisely exercised. Power to make the order and not the mere expediency or wisdom of having made it, is the question."

The case of **Proctor & Gamble Co. vs. United States**, *supra*, has long been considered a controlling case. In that case the Supreme Court, speaking to the jurisdictional question, said:

“Originally the duty of the courts to determine whether an order of the Commission should or should not be enforced carried with it the obligation to consider both the facts and the law. But it had come to pass prior to the passage of the Act creating the Commerce Court that in considering the subject of orders of the Commission, for the purpose of enforcing or restraining their enforcement, the courts were confined by statutory operation to determining whether there had been violations of the Constitution, a want of conformity to statutory authority, or of ascertaining whether power had been so arbitrarily exercised as virtually to transcend the authority conferred although it may be not technically doing so.”

In **McLean Lumber Co. et al. vs. U. S. and I. C. C.** (Special Court of Review), referring to the right of a shipper to seek injunctive relief from the effect of an adverse decision by the Interstate Commerce Commission, the special court, composed of Circuit Judge Warrington and District Judges McCall and Sanford, said:

“There is no want of jurisdiction in the Court to hear and determine the petition, upon the alleged ground that the orders sought to be annulled and enjoined are negative, and not affirmative. These orders are not in fact negative, as mere dismissals of the petitioners’ complaint against the proposed rate, but affirmatively require the railroad company to establish and maintain the new and higher rates in controversy. Clearly, therefore, the instant case is not within the rule of **Proctor & Gamble vs. United States**, 225 U. S. 282, and **Hooker vs. Knapp**, 225 U. S. 302, that a court is without jurisdiction to annul and enjoin

orders of the Commission which merely refused to give petitioners the relief sought by them; that is, on the contrary, ruled, by analogy, at least, by the Tap Line Cases, 234 U. S. 1, 22, in which it was held that an order requiring railroad carriers to cease and abstain from certain practices is affirmative in character and reviewable by the court. And see the Intermountain Rate Cases, 234 U. S. 476, 490, in which it was held that there was jurisdiction to review an order of the Commission refusing to grant the request of carriers to be permitted to charge lower rates for long than short hauls, the court saying, that while such order might be in one sense negative, it was, in another and broader sense, affirmative, since it refused that which the statute in affirmative terms declared should be granted if the prescribed conditions existed."

## § 2. Where Carrier Fails to Obey Order of the Commission.

The Commission, or any party injured by the refusal or neglect of a common carrier to obey and comply with the order of the Commission, other than orders for the payment of money, may proceed in the courts designated in the Act in an action for the enforcement of such order. This does not mean that the complainant or the Commission has a right to a review of the action and relief effected through the Commission's order, but simply to move in a competent court to the end that the court enforce such order as the Commission may have made. The question involved is the right of the Commission to make the order it actually did make, rather than the wisdom or sufficiency of the relief afforded by such order.

Section 16 of the Act to Regulate Commerce provides:

"If a carrier does not comply with an order for the payment of money within the time limit in such order,



the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any state court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the circuit court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court or state court within one year from the date of the order, and not after.

"In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint



suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff."

Act to Regulate Commerce, section 16.

This same section goes on to provide that:—

"If any carrier fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney General, may apply to the Commerce Court for the enforcement of such order. If, after hearing, that Court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the Court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same."

Act to Regulate Commerce, section 16.

In as much as the Commerce Court has been abolished, the procedure thus provided for by the Act would be instituted in the federal courts of competent jurisdiction.

Speaking of this latter provision of section 16, Mr. Daish, in his "Procedure in Interstate Commerce Cases," sec. 160, p. 197, says:

"The constitutionality of this provision (that the order has been regularly made and duly served) must be doubted, for if invoked and enforced it would prevent the review of the decision of the Commission; the language of the provision is mandatory on the courts, if it appear that the order was regularly made and duly served—i. e., that the order was duly made at a regular session of the Commission and that service had been had in the usual and customary manner."

The orders of the Commission are now self-executing by reason of the forfeitures and penalties attaching for their disobedience or neglect. The former practice in the United States circuit and district courts permitted the defendant to enjoin the taking effect of the Commission's order, but after the amendment of 1910, the proceedings in the Commerce Court did not operate as a stay of the proceedings before the Commission.

As to an order dismissing a petition, the statute is silent upon the subject of the review of the Commission's action, and it would, therefore, seem that the complainant is remediless.

"It has been suggested that the complainant whose petition has been dismissed may have a remedy in equity by filing a bill in the nature of a bill to review an erroneous decree," or "that such a one may have a right to review the proceedings of the Commission by certiorari in the Supreme Court of the District of Columbia."

Only the dictum of the courts tends to uphold this theory, but there are no direct holdings of the courts to that effect. It is not within the purpose of this work to enter upon a discussion of an unsettled and theoretical question of this nature.

The jurisdiction of the court is either to enforce the order of the Commission or to set aside or annul the order or requirement.

Where the carrier fails to satisfy the order of the Commission for the payment of money by way of reparation or in such other manner as is authorized by the Act, the complainant or any other person for whose benefit the order was made, may file suit to compel such carrier's obedience to the order, in any circuit court of the United States for the district in which he resides or in which is located the principal office of the carrier, or through which

the road of the carrier runs, or in any state court of general jurisdiction having jurisdiction of the parties. The petition in such a suit must briefly set forth the causes for which damages are claimed and the order of the Commission made thereon.

### § 3. Hearings Involving Reasonableness of Rates Given Preference.

Section 15 of the Act provides that "at any hearing involving a rate increased after January 1st, 1910, or of a rate sought to be increased after the passage of this Act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

### § 4. Commission Acting as Board of Arbitration.

While the Commission is not in express terms authorized to act as a board of arbitration in matters referred to it by consent of the parties concerned, if the subject of controversy and the issues involved present such a state of facts as would have justified a proceeding upon formal complaint or of inquiry upon the Commission's own motion, and were thus clearly within the spirit of the statute which defines its functions. The Commission accepts the responsibilities which it was thus asked to assume. The proceedings, in form, are strictly in accordance with the provisions of the Act although the voluntary submission by the adverse parties gives them in fact the nature of an arbitration.

In its annual report for 1904, the Commission commented on its action in arbitration cases during that year, as follows:—

“In two instances during the past year (1904) the Commission has been asked by both shippers and carriers to adjudicate controversies between them concerning the adjustment of rates. In each case the questions involved were of manifest importance as affecting the business of competitive communities and the traffic of railway lines by which they were served. These questions had been the subject of prolonged contention between the parties and of unavailing efforts to harmonize by direct negotiation the conflicting interests of carriers and communities whose officers and representatives finally joined in invoking the friendly offices of the Commission.

In the Matter of Differential Freight Rates to and from North Atlantic Ports, 11 I. C. C. R. 13; and

In the Matter of Freight Rates between Memphis and points in Arkansas.

Except from Ann. Report of I. C. C. for 1904, p. 23.

### **§ 5. Commission Required to Make Reports of Investigations.**

Whenever an investigation shall be made by the Commission, it shall be “its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.”

Act to Regulate Commerce, section 14.

### **§ 6. Reports if Investigations Conducted by the Commission Required to be Entered of Record.**

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be

furnished to the party who may have complained, and to any common carrier that may have been complained of.

Act to Regulate Commerce, section 14.

### **§ 7. Complaints May not be Dismissed Because of Complainant's Failure to Show Damage.**

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Act to Regulate Commerce, section 13.

### **§ 8. Informal Complaints.**

The Commission found early in its experience that more of the controversies and misunderstandings between shippers and carriers could be more speedily and satisfactorily disposed of through the intervention of the Commission than by formal complaint. By dispensing with formal procedures, the Commission has been able through amicable readjustments and settlements reached through its advice or personal contact with the parties, to handle and dispose of a great number of complaints more speedily than, and without the expense and labor of, formal hearings and decisions. The recognition by the general public and the carriers of the importance of this work on the part of the Commission has caused a tremendous increase in the number and nature of matters thus submitted to the Commission for adjustment and settlement. This adjustment of informal complaints now constitutes a large portion of the work of the Commission. A docket of informal complaints is kept and upon it are entered the various steps taken in such proceedings, including all the correspondence had relative thereto, and the final disposition of the complaints, consecutively numbered in the order of their submission.

In the adjustment of informal complaints, no evidence is taken in the manner pursued in formal cases, the facts being stated by both the shipper and the carrier. While in some instances, it is necessary for the Commission to make a preliminary investigation, the adjustments and settlements are generally accomplished through conferences and correspondence with the parties.

Ann. Report of I. C. C., for 1889.

Lest there should be any misunderstanding of the scope of authority exercised, or irregularity of procedure permitted by the Commission in its disposition of these informal matters, we quote from the Annual Report of the Commission for the year 1909, in which the Commission fully explains not only its attitude towards, but the necessity and importance of the method employed by it in handling and settling this class of complaints:—

“It might be well to state that while cases coming forward on this docket are adjusted in an informal manner, this special docket is not an informal docket except in respect to the form of pleadings and the character of the hearing. The Commission cannot on the special docket exceed the authority exercised by it on the formal docket, nor may it omit any requirement with respect to cases on the special docket that the law imposes on it in the disposition of cases on the formal docket. In all cases, whether on the formal or the informal docket, the law requires a complaint and answer and a full hearing, and provides that where damages are awarded the report of the Commission shall include the findings of fact on which the award is made. The Commission has endeavored to simplify the procedure on this special docket by accepting the application of the carrier as the equivalent of a complaint and answer, and by accepting as a sufficient compliance with the requirements of section 15 for a full hearing its admission



that the rate charged under the circumstances then existing was unreasonable.

"It will therefore be observed that the Commission's action in special reparation cases springs from the same authority which it exercises in formal cases."

See also: "Damages," ante.

### **§ 9. Effect of Administrative Orders of the Commission as General Orders.**

Since the amendment of 1906, the Commission has made numerous general or administrative rulings relating to joint rates, routing, passes, transportation regulations and practices, etc., designed for the guidance of the shippers and carriers in interpreting the meaning and intent of the Act. The statute provides severe penalties for violations of the Act, and these administrative rulings as rules of action to the carrier, not only indicate what the Commission considers violations of the Act, but aid the parties affected by it to a better understanding of the scope, intent and purpose of the law. This practice of making administrative rulings has been referred to by the Commission in several of its annual reports, as indicated by the following references:

From the Annual Report of the Commission for 1907:

"Since the last amendment of the Act to Regulate Commerce, of June, 1906, the Commission has occupied considerable time in giving administrative construction to various provisions of the law for the guidance of both shippers and carriers. To secure the best results of legislation with the least possible delay there was obvious need of a correct and uniform interpretation of the statute. Therefore, without reference to questions arising in particular cases, and to avoid unnecessary controversy, the Commission has considered it its duty to construe the law in ad-

vance wherever it appeared obscure or ambiguous, so that the obligations of the railroads and the rights of the public might be promptly understood. This has resulted in numerous rulings explaining the Commission's view of the meaning and application of the different sections and paragraphs of the statute. These rulings have, in practically every instance, been accepted by the carriers, even in cases where their legal advisers were not entirely in accord with the opinion of the Commission. The benefits of this course are beyond question. The Commission has endeavored to adopt a workable construction of the law in all cases, and has, as a rule, announced its conclusions in matters of importance only after conference and discussion with representative shippers and traffic officials."

From the Annual Report of the Commission for the year 1908:

"These rulings are promulgated from time to time in circular form and are distributed to interested persons. Other inquiries are answered by individual Commissioners as informal rulings which were authorized or approved by the Commission in conference."

From the Annual Report of the Commission for the year 1909:

"Numerous questions as to the meaning and application of various provisions of the statute are submitted from time to time in correspondence and personal interviews. Many of these questions are of great practical importance and not a few of them difficult of solution. It is the policy of the Commission to answer all proper inquiries of this kind with an indication of its views upon the points presented. If a given question relates to matters of common interest or frequent occurrence the official opinion is usually announced in conference rulings, tariff circulars, and

the like, which are thereupon printed and distributed for general information. In most instances these rulings have been accepted as correct expositions of the law and subsequent practices brought into conformity therewith. By this means a comprehensive code of rules is in process of development, the observance of which operates with increasing influence to promote just and impartial conduct. Moreover, the rules so promulgated have the highly beneficial effect of avoiding a multitude of contentions which otherwise would come to the Commission in the form of individual complaints. This method of administration, which aims to prevent uncertainty and dispute by an authoritative construction of the act, appears to be regarded with special favor, and it is believed that the efforts of the Commission in this direction are of distinct and permanent value."

The authority of the Commission to develop administratively this broad and comprehensive code of rules was questioned and affirmed in the Import Rate Case (**Texas & Pac. Ry. Co. vs. I. C. C.**, 162 U. S. 197, 40 L. Ed. 940, 16 Sup. Ct. 666), with the reservation "that, if the Commission has power of its own motion, to promulgate general decrees or orders, which thereby become rules of action to common carriers, such exertion of power must be confined to the obvious purposes and directions of the statute, since Congress has not granted it legislative powers."

As a part of its administrative rulings, the Commission has formulated a code of regulations governing the construction and filing of freight, passenger and express tariffs. These regulations are issued in circular form, the first edition of which was known as Tariff Circular 14-A, and became effective June 1, 1907, although it had previously issued special tariff circulars of lower number. Since the issuance of Circular 14-A, these regulations have been from time to time amended, revised, and added to. The latest

issued Tariff Circular governing freight and passenger tariffs is numbered 18-A, and became effective March 31, 1911, to which supplements have been promulgated. Since the amendment of 1906, express companies have been brought within the full jurisdiction of the Commission, and a separate circular governing the construction and filing of express tariffs and classifications has been promulgated, the last number of which is 19-A, which became effective February 1, 1912. The chaotic conditions of issuance, construction, and application of the carriers' tariffs and schedules obtaining at the time of the amendment of 1906 made tremendous and tedious the Commission's task of bringing them into orderly compliance with the intent and meaning of the Act.

The extent of the task and the steadfast adherence to the spirit of the statute by the Commission is best expressed in its own language:

"The underlying purpose is to maintain all of the substantive and important features of the spirit and letter of the law, and at the same time impose as little hardship, expense, or inconvenience as possible upon either carriers or their patrons.

"Lax methods on part of carriers in years gone by resulted in the practical abandonment of many rate schedules and in adopting others in lieu thereof without properly canceling from the files of the Commission the schedules so discarded. The Commission's regulations require each carrier to provide an index of its tariffs, and a methodical check of such indexes against the files of the Commission has been undertaken. In this way the records and files of the carriers and of the Commission are being brought into harmony with each other, and thousands of old and obsolete tariffs, some of them dating as far back as 1887, have been and are being formally and lawfully canceled from the files of the Commission.

“Every instance in which a tariff containing rates or rules that conflict with another tariff, or that are uncertain and ambiguous in their terms, is superseded by a tariff that is free from those features reduces the number of controversies between shippers and carriers involving the proper charge to be made for a service rendered. The Commission’s regulations do not permit the use of indefinite or vague rules in rate schedules, and the Commission has required the elimination and abandonment of certain provisions which heretofore were freely and generally used, but which led to endless disputes and, in some instances, made it utterly impossible for even the most expert to determine definitely which was the lawful rate among two or more rates that might be claimed to apply or did in fact apply, but which were in conflict with each other.

“Under former practices and the tariff conditions which grew up thereunder there were multitudes of instances in which overcharges were claimed by shippers and in which parts of the sums paid were subsequently refunded by carriers. Simplification and directness in the preparation of rate schedules and elimination of ambiguities and conflicts must operate to reduce the number of such instances. Manifestly, better understandings and more satisfactory conditions will obtain when the correct charges are assessed and paid in the first instance, and when questions of overcharges, undercharges, and refunds occur but rarely, and then only because of clerical error.

“The act authorizes the Commission to determine and prescribe the form in which the schedules required by the act shall be prepared and arranged.

(Act, Section 1.) It requires that the Commission and the public shall be given statutory notice of changes in rate schedules. (Act, Section 1.) It authorized the Commission, in its discretion, and for good cause shown, to allow changes upon less than statutory notice and to modify the requirements of the sixth section in respect to publishing, posting, and



filing tariffs. The Commission has prescribed certain regulations as to the form in which rate schedules shall be prepared and arranged, and which govern the publishing, posting, and filing of such schedules, and in the enforcement of such regulations it exercises the right and authority to refuse to accept for filing rate schedules which, to an extent justifying that action, fail to fulfill the requirements of the law or of the regulations. While a careful scrutiny of all of the features of every rate schedule filed with the Commission is wholly impracticable, all schedules offered for filing are scrutinized as to certain features, and gradually more and more are being subject to careful examination and criticism by the Commission. Minor faults are brought to the attention of the carriers in correspondence. It is confidently believed that as a result of this practice and of the work that has been done in laying the foundation for greatly improved rate schedules much more progress will be apparent in the future. It is gratifying to note that the Commission is now receiving assurances from many traffic officers of carriers that regulations which at first were thought oppressive and impracticable have proven to be wholly practicable and desirable, and it is frequently stated that even if the regulations were withdrawn practices established thereby would not be forsaken. The Commission has also received from shippers many expressions of commendation of its work in this line and gratification at the results thereof."

The promulgation of separate regulations governing the construction, publication and filing of express tariffs and classifications was necessitated by the inherent differences in the basis of constructing express rates and the method of classifying express matter as compared with freight rates and classifications.



**§ 10. Publication of Reports of Investigations, Decisions, Orders, and Rulings of the Commission.**

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

Act to Regulate Commerce, section 14.

**§ 11. Correspondence With the Commission and Subjects Thereof.**

It is the policy of the Commission to answer all proper inquiries relating to any of the matters and things coming within the obvious purposes and directions of the Act with an indication of its views upon the points presented. Through the medium of correspondence much of the informal adjustment work is accomplished, and the shipper is at liberty to apply to the Commission for its advice and opinion in any matter properly within the purview of the statute.

Conference Ruling No. 210 was promulgated by the Commission on November 16, 1906, providing as follows:

"It is believed that the best results and understandings will be reached if the conducting of ordinary correspondence between carriers and the Commission is confined to as few persons as possible. Request is therefore made that the traffic manager or the general passenger and general freight agents of each road designate not more than two officials or other representatives to respectively conduct the correspondence

with the Commission on freight and passenger matters, and to promptly advise the Commission of such appointments."

I. C. C. Confr. Rul. Bull. No. 6, Ruling No. 210.

"Through the medium of correspondence is secured the settlement of many matters extremely vexatious to shippers. The questions thus amicably adjusted are not, however, alone questions affecting the interest of individuals; on the contrary, the effect of the action taken by carriers in the adjustment of these complaints is often of wide spread interest and advantage to large communities, if not indeed of vital importance to considerable sections of the country. Controversies arising out of the relation between the carriers themselves are likewise in many instances, presented to the Commission for arbitration. The Commission is also called upon frequently by traffic officials of carriers to indicate what is considered to be the proper and lawful course to be pursued in respect to the application of rates or regulations affecting transportation. Thus, it will be seen that many great benefits result from the adjustment or settlement through correspondence of questions informally submitted for investigation."

I. C. C. Ann. Reps. 1907 and 1908.

## **§ 12. Carriers Required to Designate Agent for Purposes of Service of Notices.**

Every common carrier subject to the provisions of the Act must "designate in writing an agent in the city of Washington, District of Columbia, upon whom service of all notices and processes may be made for and on behalf of said common carrier in any proceeding or suit pending before the Interstate Commerce Commission or before \* \* \* (the) Commerce Court, and to file such designation in the office of the secretary of the Interstate Com-

merce Commission, which designation may from time to time be changed by like writing similarly filed."

Act creating Commerce Court, section 6.

NOTE:—The Commerce Court has since been abolished, but the requirement still obtains as to the Interstate Commerce Commission.

### § 13. Service Upon Agent of Carrier.

Service of all notices and processes may be made upon such common carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the city of Washington, with like effect as if made personally upon such common carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Interstate Commerce Commission or Commerce Court may be made by posting such notice or process in the office of the secretary of the Interstate Commerce Commission.

Act creating Commerce Court, section 6.

NOTE:—The Commerce Court has since been abolished, but the provision still obtains as to services of notices and processes by the Interstate Commerce Commission.

### § 14. Notices to Satisfy Complaints.

See this volume, "Service of Complaints by the Commission," *ante*.

### § 15. Cases at Issue.

Upon the filing an answer and application made in writing for hearing, a case pending before the Interstate Commerce Commission is deemed to be at issue.

### § 16. Hearings.

Upon issue being joined by the service of an answer or notice of hearing on the petition, the Commission will assign a time and place for hearing the case, which will be

at its office in Washington, unless otherwise ordered. Witnesses will be examined orally before the Commission, unless their testimony be taken or the facts be agreed upon as provided for in these rules. The complainant must in all cases establish the facts alleged to constitute a violation of the law, unless the defendant admits the same or fails to answer the petition. The defendant must also prove facts alleged in the answer, unless admitted by the petitioner, and fully disclose its defense at the hearing.

In case of failure to answer, the Commission will take such proof of the facts as may be deemed proper and reasonable, and make such order thereon as the circumstances of the case appear to require.

Cases may be heard by one or more members of the Commission, or by a special agent or examiner, as ordered by the Commission. When testimony is directed to be taken by a special agent or examiner, such officer shall have power to administer oaths, examine witnesses, and receive evidence, and shall make report thereof to the Commission.

All cases shall be orally argued in Washington, D. C., or submitted upon briefs, unless otherwise ordered by the Commission.

I. C. C. Prac. & Proced. Rules, Rule No. X, *post*.

### § 17. Briefing Cases.

Unless otherwise specially ordered, printed briefs shall be filed on behalf of the parties in each case. The brief for complainant and the brief or briefs for the defendants, or interveners, shall contain an abstract of the evidence relied upon by the parties filing the same; and in such abstract reference shall be made to the pages of the record wherein the evidence appears. The abstract of evidence should follow the statement of the case and precede the argument.

Briefs shall be printed in 12-point type, on antique-finish paper,  $5\frac{7}{8}$  inches wide by 9 inches long, with suitable margins, double-leaded text and single-leaded citations.

At the close of the taking of the testimony in each case the Commissioner or examiner before whom such testimony is taken shall fix the specific dates on or before which the briefs of the respective parties must be filed with the Commission and served on the adverse parties. The date so fixed, unless otherwise ordered at said time, shall allow to the respective parties the following periods of time within which to file with the Commission and serve their respective briefs on the adverse parties, to-wit: To the complainant, thirty days from the date of the conclusion of the testimony; to the defendants and interveners, fifteen days after the specific date fixed for the complainant, and to the complainant for reply brief, ten days after the date fixed for defendants or interveners. If the briefs of the respective parties are not filed and served on the date fixed for each, the case will stand submitted without briefs on the date that defendants' or interveners' briefs are due. Briefs of parties not filed as aforesaid and served on the respective parties on or before the specific dates fixed therefor will not be received or considered by the Commission.

All briefs shall be filed with the secretary and shall be accompanied by notice showing service upon the adverse parties, and fifteen copies of each brief shall be filed for the use of the Commission. The parties will be required to comply strictly with this rule and except for good cause shown, no extension of time will be allowed. Application for extension of time in which to file briefs shall be by petition in writing, stating the facts on which the application

rests, which must be filed with the Commission at least five days before the time for filing such brief has expired.

Applications for oral argument may be made by any party at the close of the taking of testimony or at the time of the filing of his brief. Such applications can be granted only by the Commission.

### § 18. Free Copies of Transcripts of Evidence.

One copy of the testimony will be furnished by the Commission for the use of the complainant and one copy for the use of the defendant, without charge; and when two or more complainants or defendants have appeared at the hearing, such complainants or defendants must designate to whom the copy for their use shall be delivered.

I. C. C. Prac. & Proced. Rules, Rule No. XVII, *post*. [Appendix].

No free copies of transcripts of evidence are furnished in proceedings instituted by the Commission on its own motion, including proceedings in the suspension of tariffs.

I. C. C. Prac. & Proced. Rules, Rule No. XVII, *post*. [Appendix].





# APPENDICES

## ACT TO REGULATE COMMERCE

As originally passed February 4, 1887.

### ACT TO REGULATE COMMERCE

Approved February 4, 1887, and in effect April 5, 1887.<sup>(1)</sup>

Sec. 1. That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all the instrumentalities of shipment or carriage.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

Sec. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the trans-

portation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

(<sup>1</sup>) 24 Stats. at Large, 379; 1 Supp. to Rev. Stat. U. S., 529.

Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Sec. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: Provided, however, That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

Sec. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Sec. 6. That every common carrier subject to the provisions of this act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad

between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges and any rules or regulations which in any wise change, effect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, of at least the size of ordinary pica, and copies for the use of the public shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected.

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep for public inspection, at every depot where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. Reductions in such published rates, fares, or charges may be made without previous public notice; but whenever any such reduction is made, notice of the same shall immediately be publicly posted and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection.

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by

more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published; but no common carrier party to any such joint tariff shall be liable for the failure of any other common carrier party thereto to observe and adhere to the rates, fares, or charges thus made and published.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated or wherein such offense may be committed, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

Sec. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

Sec. 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or



shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Sec. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Sec. 10. That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense.

Sec. 11. That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency,



neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioner shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all powers of the Commission.

Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this act the Commission shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Sec. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

Sec. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

Sec. 16. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants, in such manner

as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said Commission shall be **prima facie** evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of five hundred dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining, or into court to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

Sec. 17. That the Commission may conduct its proceedings in

such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations.

Sec. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the salaries of judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employes as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

The Commission shall be furnished by the Secretary of the Interior with suitable offices and all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employes under their orders, in making any investigation in any other places than in the city of Washington, shall be allowed and paid, on the presentation of itemized vouchers therefor approved by the chairman of the Commission and the Secretary of the Interior.

Sec. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

Sec. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stock-holders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of employes and the salaries paid each class; the amounts expended for improvements each year,



how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act; prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Sec. 21. That the Commission shall, on or before the first day of December of each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.

Sec. 22. That nothing in this act shall apply to the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employes, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employes; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: Provided, That no pending litigation shall in any way be affected by this act.

Sec. 23. That the sum of one hundred thousand dollars is hereby appropriated for the use and purposes of this act for the fiscal year ending June thirtieth, Anno Domini eighteen hundred and eighty-eight, and the intervening time anterior thereto.

Sec. 24. That the provisions of sections eleven and eighteen of this act, relating to the appointment and organization of the Commission herein provided for, shall take effect immediately, and the remaining provisions of this act shall take effect sixty days after its passage.

## AMENDATORY ACTS

### AMENDMENTS TO THE ACT TO REGULATE COMMERCE

#### Amendments of March 2, 1889.

The enactment of March 2, 1889, amended sections 6, 10, 12, 14, 16, 17, 18, 21 and 22 of the Act to Regulate Commerce as follows:

##### (a) Amendment of section 6.

Sec. 1. That section six of an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be, and it is hereby, amended so as to read as follows:

Sec. 6. That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges of any rules or regulations which in any wise change, effect, or determine any part of the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept



open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and several common carriers operating such lines or routes establish joint tariffs or rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem practicable for such common carrier to publish, and the places in which they shall be published.

No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public

inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of trans-shipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

**(b) Amendment of section 10.**

Sec. 2. That section ten of said act is hereby amended so as to read as follows:

Sec. 10. That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: Provided, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any officer or agent

thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the lines of transportation of such common carrier, shall be deemed guilty of misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person, or such officer or agent of such corporation or company, it shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

(c) Amendment of section 12.

Sec. 3. That section twelve of said act is hereby amended so as to read as follows:

Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common

carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute, under the direction of the Attorney-General of the United States, all necessary proceedings for the enforcement of the provisions of this act, and for the punishment of all violations thereof; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States, and for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and in case of disobedience to a subpoena, the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

(d) Amendment of section 14.

Sec. 4. That section fourteen of said act is hereby amended so as to read as follows:

Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publication shall



be competent evidence of the reports and decisions of the Commission therein contained, in all courts of the United States, and of the several States, without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

(c) Amendment of section 16.

Sec. 5. That section sixteen of said act is hereby amended so as to read as follows:

Sec. 16. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment of the Constitution of the United States, it shall be lawful for the Commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every

day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect to security for such appeal; but such appeal shall not operate to stay or supersede the order or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

If the matters involved in any such order or requirement of said Commission are found upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the circuit court of the United States sitting as a court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirements shall happen, alleging such violation or disobedience as the case may be; and said court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid. At the trial the findings of fact of said Commission as set forth in its report shall be *prima facie* evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing, then the court shall try the issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court. If the judgment of the circuit court shall be in favor of the party complaining, he or they



shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

**(f) Amendment of section 17.**

Sec. 6. That section seventeen of said act is hereby amended so as to read as follows:

Sec. 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas.

**(g) Amendment of section 18.**

Sec. 7. That section eighteen of said act is hereby amended so as to read as follows:

Sec. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the City of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

**(h) Amendment of section 21.**

Sec. 8. That section twenty-one of said act is hereby amended so as to read as follows:

Sec. 21. That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain

such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

(i) **Amendment of section 22.**

Sec. 9. That section twenty-two of said act is hereby amended so as to read as follows:

Sec. 22. That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: Provided, That no pending litigation shall in any way be affected by this act.

Sec. 10. (Added as section 23 of Act to Regulate Commerce, March 2, 1889.) That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: Provided, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: Provided, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

Amendment of February 10, 1891.

The amendment of February 10, 1891, changed section 12 of the act to read as follows:

(a) Amendment of section 12.

Sec. 1. That section twelve of an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be, and it is hereby, amended so as to read as follows:

Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investiga-

tion pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a country court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commissions. All depositions must be promptly filed with the Commission.

Witnesses whose depositions are taken pursuant to this act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

26 U. S. Stats. at Large, 743.

#### **Amendment of February 8, 1895.**

The amendment of February 8, 1895, added the following proviso to section 22:

##### **(a) Amendment of section 22.**

Sec. 1. That section twenty-two of an Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and as amended March second, eighteen hundred and eighty-nine, be, and is hereby, amended by adding thereto the following proviso:

Provided further, That nothing in this act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under



such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this Act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section ten of this act shall apply to any violation of the requirements of this proviso.

28 U. S. Stats. at Large, 643.

#### Amendments of June 29, 1906.

##### (a) Amendment of section 1.

Sec. 1. That section one of an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be amended so as to read as follows:

Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purposes of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "common carrier," as used in this Act, shall include express companies and sleeping car companies. The term "railroad," as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or oper-

ated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

No common carrier subject to the provisions of this Act shall, after January 1, 1907, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian associations, inmates of hospitals, and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to necessary caretakers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars; and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an act entitled "An act to further regulate commerce with foreign nations and among the



States," approved February nineteenth, nineteen hundred and three, and any amendment thereof.

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Any common carrier subject to the provisions of this Act upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Commission, as provided in section thirteen of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

#### (b) Amendment of section 6.

Sec. 2. That section six of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

Sec. 6. That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established rates, fares, and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in **any**

wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: Provided, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties. Every common carrier subject to this Act shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged and may change the form from time to time as shall be found expedient.

No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs: Provided, That wherever the word "carrier" occurs in this Act it shall be held to mean "common carrier."

That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic.

That section one of the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, be amended so as to read as follows:

That anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than twenty

thousand dollars: Provided, That any person, or any officer or director of any corporation subject to the provisions of this Act, or the Act to regulate commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee, any such carrier shall transport property from one State, or Territory, or the District of Columbia to any other State, Territory, or the District of Columbia or foreign country, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this Act, shall in addition to any penalty provided by this Act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney-General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction, a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.



**(c) Amendment of section 14.**

Sec. 3. That section fourteen of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

**(d) Amendment of section 15.**

Sec. 4. That section fifteen of said Act be amended so as to read as follows:

Sec. 15. That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this Act, for the transportation of persons or property as defined in the first section of this Act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violations, to the extent to which the Commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed. All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of a Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to

agree among themselves upon the apportionment or division thereof, the Commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section.

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act.

#### **(c) Amendment of section 16.**

Sec. 5. That section sixteen of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

Sec. 16. That if, after hearing on a complaint made as provided in section thirteen of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action



accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after: Provided, That claims accrued prior to the passage of this Act may be presented within one year.

In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

Every order of the Commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act, shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. The Commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this Act, paying the expenses of such employment out of its own appropriation.

If any carrier fails or neglects to obey any order of the Commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the Commission in its own name, may apply to the circuit court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition, which shall state the substance of the

order and the respect in which the carrier has failed of obedience, and shall be served upon the carrier in such manner as the court may direct, and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same; and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.

From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States, and in such court the case shall have priority in hearing and determination over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from.

The venue of suits brought in any of the circuit courts of the United States against the Commission to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time after such order is promulgated. And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office, in the District of Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts. The provisions of "An Act to expedite the hearing and determination of suits in equity, and so forth," approved February eleventh, nineteen hundred and three, shall be, and are hereby, made applicable to all such suits, including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the Commission, or any of the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting Act of February eleventh, nineteen hundred and three, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes: Provided, That no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: Provided further, That the appeal must be taken within thirty days from the entry of such order or decree and it shall take precedence in the

appellate court over all other causes, except causes of like character and criminal causes.

The copies of schedules and tariffs of rates, fares, and charges, and of all contracts, agreements, or arrangements between common carriers file with the Commission as herein provided, and the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, as required by the provisions of this Act, shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of or extracts from any of said schedules, tariffs, contracts, agreements, arrangements, or reports made public records as aforesaid, certified by the secretary under its seal, shall be received in evidence with like effect as the originals.

**(f) Amendment of section 16a.**

Sec. 6. That a new section be added to said Act immediately after section sixteen, to be numbered as section sixteen a, as follows:

Sec. 16a. That after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

**(g) Amendment of section 20.**

Sec. 7. That section twenty of said Act be amended so as to read as follows:

Sec. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's

property, franchises, and equipments; the number of employees, and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulation concerning rates or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the Commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the Commission it shall be subject to the forfeitures last above provided.

Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this Act.

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

In case of failure or refusal on the part of any such carrier,



receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense, and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act.

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment.

Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

That the common carrier, railroad or transportation company

issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

**(h) Amendment of section 24.**

Sec. 8. That a new section be added to said Act at the end thereof, to be numbered as section twenty-four, as follows:

Sec. 24. That the Interstate Commerce Commission is hereby enlarged so as to consist of seven members with terms of seven years, and each shall receive ten thousand dollars compensation annually. The qualifications of the Commissioners and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December thirty-first, nineteen hundred and eleven, one for a term expiring December thirty-first, nineteen hundred and twelve. The terms of the present Commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present Commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Not more than four Commissioners shall be appointed from the same political party.

Sec. 9. That all existing laws relating to the attendance of witnesses and the production of evidence and the compelling of testimony under the Act to regulate commerce and all Acts amendatory thereof shall apply to any and all proceedings and hearings under this Act.

Sec. 10. That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed, but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

Sec. 11. That this Act shall take effect and be in force from and after its passage.

34 U. S. Stats. at Large, 584.

[Note: By a joint resolution adopted after the passage of this Act it was provided that this Act should go into effect sixty days after June 29, 1906.]

**Amendment of April 13, 1908.**

Provided further, That the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier, and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood and minor children during minority of persons who died, while in the service of any such com-



mon carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in the provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and any amendment thereof.

**Amendment of June 18, 1910.**

36 S. L. 539.

**Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,** That a court of the United States is hereby created which shall be known as the commerce court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing contained in this Act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the commerce court.

The jurisdiction of the commerce court over cases of the foregoing classes shall be exclusive; but this Act shall not affect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes.

The commerce court shall be a court of record, and shall have a seal of such form and style as the court may prescribe. The said court shall be composed of five judges, to be from time to time designated and assigned thereto by the Chief Justice of the United States, from among the circuit judges of the United States, for the period of five years, except that in the first instance the court shall be composed of the five additional circuit judges to be appointed as herein-after provided, who shall be designated by the President to serve for one, two, three, four, and five years, respectively, in order that the period of designation of one of the said judges shall expire in each

year thereafter. In case of the death, resignation, or termination of assignment of any judge so designated, the Chief Justice shall designate a circuit judge to fill the vacancy so caused and to serve during the unexpired period for which the original designation was made. After the year nineteen hundred and fourteen no circuit judge shall be redesignated to serve in the commerce court until the expiration of at least one year after the expiration of the period of his last previous designation. The judge first designated for the five-year period shall be the presiding judge of said court, and thereafter the judge senior in designation shall be the presiding judge.

Each of the judges during the period of his service in the commerce court shall, on account of the regular sessions of the court being held in the city of Washington, receive in addition to his salary as circuit judge an expense allowance at the rate of one thousand five hundred dollars per annum.

The President shall, by and with the advice and consent of the Senate, appoint five additional circuit judges no two of whom shall be from the same judicial circuit, who shall hold office during good behavior and who shall be from time to time designated and assigned by the Chief Justice of the United States for service in the circuit court of any district, or the circuit court of appeals for any circuit, or in the commerce court.

The associate judges shall have precedence and shall succeed to the place and powers of the presiding judge whenever he may be absent or incapable of acting in the order of the date of their designations. Four of said judges shall constitute a quorum, and at least a majority of the court shall concur in all decisions.

The court shall also have a clerk and a marshal, with the same duties and powers, so far as they may be appropriate and are not altered by rule of the court, as are now possessed by the clerk and marshal, respectively, of the Supreme Court of the United States. The offices of the clerk and marshal of the court shall be in the city of Washington, in the District of Columbia. The judges of the court shall appoint the clerk and marshal, and may also appoint, if they find it necessary, a deputy clerk and deputy marshal; and such clerk, marshal, deputy clerk and deputy marshal shall hold office during the pleasure of the court. The salary of the clerk shall be four thousand dollars per annum; the salary of the marshal three thousand dollars per annum; the salary of the deputy clerk two thousand five hundred dollars per annum; and the salary of the deputy marshal two thousand five hundred dollars per annum. The said clerk and marshal may, with the approval of the court employ all requisite assistance. The costs and fees in said court shall be established by the court in a table thereof, approved by the Supreme Court of the United States, within four months after the organization of the court; but such costs and fees shall in no case exceed those charged in the Supreme Court of the United States, and shall be accounted for and paid into the Treasury of the United States.

The commerce court shall be always open for the transaction of business. Its regular sessions shall be held in the city of Washington, in the District of Columbia; but the powers of the court or any judge thereof, or of the clerk, marshal, deputy clerk, or deputy marshal may be exercised anywhere in the United States; and for expedition of the work of the court and the avoidance of undue expense or inconvenience to suitors the court shall hold sessions in different parts of the United States as may be found desirable. The actual and

necessary expenses of the judges, clerk, marshal, deputy clerk, and deputy marshal of the court incurred for travel and attendance elsewhere than in the city of Washington shall be paid upon the written and itemized certificate of such judge, clerk, marshal, deputy clerk, or deputy marshal by the marshal of the court and shall be allowed to him in the statement of his accounts with the United States.

The United States marshals of the several districts outside of the city of Washington in which the commerce court may hold its sessions shall provide, under the direction and with the approval of the Attorney-General of the United States, such rooms in the public buildings of the United States as may be necessary for the court's use; but in case proper rooms cannot be provided in such public buildings, said marshals, with the approval of the Attorney-General of the United States, may then lease from time to time other necessary rooms for the court.

If at any time the business of the commerce court does not require the services of all the judges the Chief Justice of the United States may, by writing, signed by him and filed in the Department of Justice, terminate the assignment of any of the judges or temporarily assign him for service in any circuit court or circuit court of appeals. In case of illness or other disability of any judge assigned to the commerce court the Chief Justice of the United States may assign any other circuit judge of the United States to act in his place, and may terminate such assignment when the exigence therefor shall cease; and any circuit judge so assigned to act in place of such judge shall, during his assignment, exercise all the powers and perform all the functions of such judge.

In all cases within its jurisdiction the commerce court, and each of the judges assigned thereto, shall, respectively, have and may exercise any and all of the powers of a circuit court of the United States and of the judges of said court, respectively, so far as the same may be appropriate to the effective exercise of the jurisdiction hereby conferred. The commerce court may issue all writs and process appropriate to the full exercise of its jurisdiction and powers and may prescribe the form thereof. It may also, from time to time, establish such rules and regulations concerning pleading, practice, or procedure in cases or matters within its jurisdiction as to the court shall seem wise and proper. Its orders, writs, and process may run, be served, and be returnable anywhere in the United States; and the marshal and deputy marshal of said court and also the United States marshals and deputy marshals in the several districts of the United States shall have like powers and be under like duties to act for and in behalf of said court as pertain to United States marshals and deputy marshals generally when acting under like conditions concerning suits or matters in the circuits of the United States.

The jurisdiction of the commerce court shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioners cause of action and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the commerce court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of

the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court; and may prescribe that the evidence be taken before a single judge of the court, with power to rule upon the admission of evidence. Except as may be otherwise provided in this Act, or by rule of the court, the practice and procedure in the commerce court shall conform as nearly as may be to that in like cases in a circuit court of the United States.

The commerce court shall be opened for the transaction of business at a date to be fixed by order of the said court, which shall be not later than thirty days after the judges thereof shall have been designated.

Sec. 2. That a final judgment or decree of the commerce court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a circuit court of the United States to the Supreme Court, and the commerce court may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the commerce court as the case may require.

Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the commerce court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require.

An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or decree of the commerce court granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission, provided such appeal be taken within thirty days from the entry of such order or decree.

Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court.

Sec. 3. That suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the commerce court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the commerce court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. No order or injunction so restraining or suspending an order of the Interstate Commerce Commission shall be made by the commerce court otherwise than upon notice and after hearing,



except that in cases where irreparable damage would otherwise ensue to the petitioner, said court, or a judge thereof may, on hearing after not less than three days' notice to the Interstate Commerce Commission and the Attorney-General, allow a temporary stay or suspension in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of such court or judge, pending application to the court for its order or injunction, in which case the said order shall contain a specific finding based upon evidence submitted to the judge making the order and identified by reference thereto that such irreparable damage would result to the petitioner and specifying the nature of the damage. The court may at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until its decision upon the application.

Sec. 4. That all cases and proceedings in the commerce court which but for this Act would be brought by or against the Interstate Commerce Commission shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the commerce court whenever, though it has not been made a party, public interests are involved.

Sec. 5. That the Attorney-General shall have charge and control of the interests of the Government in all cases and proceedings in the commerce court, and in the Supreme Court of the United States upon appeal from the commerce court; and if in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney-General shall stipulate with such special attorneys and counsel the amount of their compensation, which shall not be in excess of the sums appropriated therefor by Congress for such purposes, and shall have supervision of their action: **Provided**, That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suits: **Provided further**, That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by any one under the terms of this Act, or the Acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof, and the Attorney-General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or nonaction of the Attorney-General of the United States therein.

Complainants before the Interstate Commerce Commission inter-

ested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States.

Sec. 6. That until the opening of the commerce court as in section one hereof provided, all cases and proceedings of which from that time the commerce court is hereby given exclusive jurisdiction may be brought in the same courts and conducted in like manner and with like effect as is now provided by law; and if any such case or proceeding shall have gone to final judgment or decree before the opening of the commerce court, appeal may be taken from such final judgment or decree in like manner and with like effect as is now provided by law. Any such case or proceeding within the jurisdiction of the commerce court which may have been begun in any other court as hereby allowed before the said date shall be forthwith transferred to the commerce court, if it has not yet proceeded to final judgment or decree in such other court unless it has been finally submitted for the decision of such court, in which case the cause shall proceed in such court to final judgment or decree and further proceeding thereafter, and appeal may be taken direct to the Supreme Court, and if remanded such cause may be sent back to the court from which the appeal was taken or to the commerce court for further proceeding as the Supreme Court shall direct; and all previous proceedings in such transferred case shall stand and operate notwithstanding the transfer, subject to the same control over them by the commerce court and to the same right of subsequent action in the case or proceeding as if the transferred case or proceeding had been originally begun in the commerce court. The clerk of the court from which any case or proceeding is so transferred to the commerce court shall transmit to and file in the commerce court the originals of all papers filed in such case or proceeding and a certified transcript of all record entries in the case or proceeding up to the time of transfer.

It shall be the duty of every common carrier subject to the provisions of this Act within sixty days after the taking effect of this Act, to designate in writing an agent in the city of Washington, District of Columbia, upon whom service of all notices and processes may be made for and on behalf of said common carrier in any proceeding or suit pending before the Interstate Commerce Commission or before said commerce court, and to file such designation in the office of the secretary of the Interstate Commerce Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and processes may be made upon such common carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the city of Washington, with like effect as if made personally upon such common carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Interstate Commerce Commission or commerce court may be made by posting such notice or process in the office of the secretary of the Interstate Commerce Commission.

Sec. 7. That section one of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby now amended so as to read as follows:

"Section 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation



of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States or the District of Columbia, to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: **Provided, however,** That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one State and not transmitted to or from a foreign country from or to any State or Territory as aforesaid.

"The term 'common carrier' as used in this Act shall include express companies and sleeping car companies. The term 'railroad' as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes and providing for reasonable compensation to those entitled thereto.

"All charges made for any service rendered or to be rendered in the transportation of passengers or property and for the transmission of messages by telegraph, telephone, or cable, as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: **Provided**, That messages by telegraph, telephone, or cable, subject to the provisions of this Act, may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages: **And provided further**, That nothing in this Act shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers, for the exchange of services.

"And it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this Act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every such unjust and unreasonable classification, regulation, and practice with reference to commerce between the States and with foreign countries is prohibited and declared to be unlawful.

"No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, **except** to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work, to indigent, destitute, and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; to necessary care takers of live stock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: **Provided**, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from

carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: **And Provided further,** That this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees and their families of such telegraph, telephone, and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this Act: **Provided further,** That the term 'employees' as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood and minor children during minority of persons who died, while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof.

"From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

"Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation shall construct, maintain and operate upon reasonable terms a switch connection with any such lateral branch line of railroad or private side track which may be constructed to connect with its railroad where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral, branch line of railroad may make complaint to the commission, as provided in section thirteen of this Act, and the commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and

the commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the commission, other than orders for the payment of money."

Sec. 8. That section four of said Act to regulate commerce be amended so as to read as follows:

"Section 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this Act; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: **Provided, however,** That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: **Provided further,** That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission.

"Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition."

Sec. 9. That Section six of said Act to regulate commerce, as heretofore amended, is hereby now amended by adding four new paragraphs at the end thereof, as follows:

"The commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the commission shall be void and its use shall be unlawful.

"In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

"If any common carrier subject to the provisions of this Act, after written request made upon the agent of such carrier hereinafter in this section referred to, by any person or company for a written



statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

"It shall be the duty of every carrier by railroad to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name so posted in any station, it shall be sufficient to address such request in substantially the following form: 'The Station Agent of the \_\_\_\_\_ Company at \_\_\_\_\_ Station,' together with the name of the proper post-office, inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any post-office."

Sec. 10. That section ten of said Act to regulate commerce, as heretofore amended, be now amended so as to read as follows:

Section 10. That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done; or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: **Provided**, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

"Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent

thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

"Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this Act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement, or entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.

"If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce or attempt to induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon



conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom."

Sec. 11. That section thirteen of said Act to regulate commerce be amended so as to read as follows:

"Sec. 13. That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

"Said commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant."

Sec. 12. That section fifteen of said Act to regulate commerce, as heretofore amended, is hereby now amended so as to read as follows:

"Sec. 15. That whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or after full hearing under an order for investigation and hearing made by the commission on its own initiative (either in extension of any pending complaint or

without any complaint whatever), the commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this Act for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this Act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act, the commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. All orders of the commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the commission, unless the same shall be suspended or modified or set aside by the commission, or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

"Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, fare,

charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective: **Provided**, That if any such hearing can not be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of this Act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

"The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. The commission shall not, however, establish any through route, classification, or rate between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character, nor shall the commission have the right to establish route, classification, rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

"And in establishing such through route, the commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established.

"In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this Act to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this Act provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route,

and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: **Provided, however,** That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

"It shall be unlawful for any common carrier subject to the provisions of this Act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: **Provided,** That nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any state or federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

"Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars.

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

"The foregoing enumeration of powers shall not exclude any power which the commission would otherwise have in the making of an order under the provisions of this Act."

Sec. 13. That section sixteen of said Act to regulate commerce, as heretofore amended, is hereby now amended so as to read as follows:

"Sec. 16. That if, after hearing on a complaint made as provided in section thirteen of this Act, the commission shall determine that any party complainant is entitled to an award of damages under the



provisions of this Act for a violation thereof, the commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

"If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any state court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the commission in the premises. Such suit in the circuit court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court or state court within one year from the date of the order, and not after.

"In such suits all parties in whose favor the commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

"Every order of the commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law.

"The commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

"It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

"Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

"The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit

in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

"It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

"The commission may employ such attorneys as it finds necessary for proper legal aid and service of the commission or its members in the conduct of their work or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the commission's own instance or upon complaint, or to appear for and represent the commission in any case pending in the commerce court; and the expenses of such employment shall be paid out of the appropriation for the commission.

"If any carrier fails or neglects to obey any order of the commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney-General, may apply to the commerce court for the enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

"The copies of schedules and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the commission as required under the provisions of this Act shall be preserved as public records in the custody of the secretary of the commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the secretary, under the commission's seal, shall be received in evidence with like effect as the originals."

Sec. 14. That section twenty of said Act to regulate commerce, as heretofore amended, is hereby amended by striking out the following paragraph:

"Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully



required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the commission it shall be subject to the forfeitures last above provided;”

And by inserting in lieu of the paragraph so stricken out the following:

“Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the commission by order substitute that period for the year ending June thirtieth, and shall be made out under oath and filed with the commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided.”

Sec. 15. That nothing in this Act contained shall undo or impair any proceedings heretofore taken by or before the Interstate Commerce Commission or any of the Acts of said commission; and in any cases, proceedings, or matters now pending before it, the commission may exercise any of the powers hereby conferred upon it, as would be proper in cases, proceedings, or matters hereafter initiated; and nothing in this Act contained shall operate to release or affect any obligation, liability, penalty, or forfeiture heretofore existing against or incurred by any person, corporation, or association.

Sec. 16. That the President is hereby authorized to appoint a commission to investigate questions pertaining to the issuance of stocks and bonds by railroad corporations, subject to the provisions of the Act to regulate commerce, and the power of Congress to regulate or affect the same, and to fix the compensation of the members of such commission. Said commission shall be and is hereby authorized to employ experts to aid in the work of inquiry and examination, and such clerks, stenographers, and other assistants as may be necessary, which employees shall be paid such compensation as the commission may deem just and reasonable upon a certificate to be issued

by the chairman of the commission. The several departments and bureaus of the Government shall detail from time to time such officials and employees and furnish such information to the commission as may be directed by the President. For the purposes of its investigations the commission shall be authorized to incur and have paid upon the certificate of its chairman such expenses as the commission shall deem necessary: **Provided, however,** That the total expenses authorized or incurred under the provisions of this section for compensation, employees, or otherwise, shall not exceed the sum of twenty-five thousand dollars.

Sec. 17. That no interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute shall be issued or granted by any justice of the supreme court, or by any circuit court of the United States, or by any judge thereof, or by any district judge acting as circuit judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit judge, or to a district judge acting as circuit judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court of the United States or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court of the United States, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: **Provided, however,** That one of such three judges shall be a justice of the Supreme Court of the United States or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney-general of the State, and to such other persons as may be defendants in the suit: **Provided,** That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court of the United States, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall only remain in force until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken directly to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case.

Sec. 18. That this Act shall take effect and be in force from and after the expiration of sixty days after its passage, except as to sections twelve and sixteen, which sections shall take effect and be in force immediately.

**Amendment of August 24, 1912.**

37 S. L. 566.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the zone of land and land under water of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the canal now being constructed thereon, which zone begins in the Caribbean Sea three marine miles from mean low-water mark and extends to and across the Isthmus of Panama into the Pacific Ocean to the distance of three marine miles from the mean low-water mark, excluding therefrom the cities of Panama and Colon and their adjacent harbors located within said zone, as excepted in the treaty with the Republic of Panama dated November eighteenth, nineteen hundred and three, but including all islands within said described zone, and in addition thereto the group of islands in the Bay of Panama named Perico, Naos, Culebra, and Flamenco, and any lands and waters outside of said limits above described which are necessary or convenient or from time to time may become necessary or convenient for the construction, maintenance, operation, sanitation, or protection of the said canal or of any auxiliary canals, lakes, or other works necessary or convenient for the construction, maintenance, operation, sanitation, or protection of said canal, the use, occupancy, or control whereof were granted to the United States by the treaty between the United States and the Republic of Panama, the ratifications of which were exchanged on the twenty-sixth day of February, nineteen hundred and four, shall be known and designated as the Canal Zone, and the canal now being constructed thereon shall hereafter be known and designated as the Panama Canal. The President is authorized, by treaty with the Republic of Panama, to acquire any additional land or land under water not already granted, or which was excepted from the grant, that he may deem necessary for the operation, maintenance, sanitation, or protection of the Panama Canal, and to exchange any land or land under water not deemed necessary for such purposes for other land or land under water which may be deemed necessary for such purposes, which additional land or land under water so acquired shall become part of the Canal Zone.

Sec. 2. That all laws, orders, regulations, and ordinances adopted and promulgated in the Canal Zone by order of the President for the government and sanitation of the Canal Zone and the construction of the Panama Canal are hereby ratified and confirmed as valid and binding until Congress shall otherwise provide. The existing courts established in the Canal Zone by Executive order are recognized and confirmed to continue in operation until the courts provided for in this Act shall be established.

Sec. 3. That the President is authorized to declare by Executive order that all land and land under water within the limits of the Canal Zone is necessary for the construction, maintenance, operation, sanitation, or protection of the Panama Canal, and to extinguish, by agreement when advisable, all claims and titles of adverse claimants and occupants. Upon failure to secure by agreement title to any such parcel of land or land under water the adverse claim or occupancy shall be disposed of and title thereto secured in the United States and compensation therefor fixed and paid in the manner provided in the aforesaid treaty with the Republic of Panama, or such modification of such treaty as may hereafter be made.

Sec. 4. That when in the judgment of the President the construction of the Panama Canal shall be sufficiently advanced toward completion to render the further services of the Isthmian Canal Commission unnecessary the President is authorized by Executive order to discontinue the Isthmian Canal Commission, which, together with the present organization, shall then cease to exist; and the President is authorized thereafter to complete, govern, and operate the Panama Canal and govern the Canal Zone, or cause them to be completed, governed, and operated, through a governor of the Panama Canal and such other persons as he may deem competent to discharge the various duties connected with the completion, care, maintenance, sanitation, operation, government, and protection of the canal and Canal Zone. If any of the persons appointed or employed as aforesaid shall be persons in the military or naval service of the United States, the amount of the official salary paid to any such person shall be deducted from the amount of salary or compensation provided by or which shall be fixed under the terms of this Act. The governor of the Panama Canal shall be appointed by the President, by and with the advice and consent of the Senate, commissioned for a term of four years, and until his successor shall be appointed and qualified. He shall receive a salary of ten thousand dollars a year. All other persons necessary for the completion, care, management, maintenance, sanitation, government, operation, and protection of the Panama Canal and Canal Zone shall be appointed by the President, or by his authority, removable at his pleasure, and the compensation of such persons shall be fixed by the President, or by his authority, until such time as Congress may by law regulate the same, but salaries or compensation fixed hereunder by the President shall in no instance exceed by more than twenty-five per centum the salary or compensation paid for the same or similar services to persons employed by the Government in continental United States. That upon the completion of the Panama Canal the President shall cause the same to be officially and formally opened for use and operation.

Before the completion of the canal, the Commission of Arts may make report to the President of their recommendation regarding the artistic character of the structures of the canal, such report to be transmitted to Congress.

Sec. 5. That the President is hereby authorized to prescribe and from time to time change the tolls that shall be levied by the Government of the United States for the use of the Panama Canal: **Provided**, That no tolls, when prescribed as above, shall be changed, unless six months' notice thereof shall have been given by the President by proclamation. No tolls shall be levied upon vessels engaged in the coastwise trade of the United States. That section forty-one hundred and thirty-two of the Revised Statutes is hereby amended to read as follows:

"Sec. 4132. Vessels built within the United States and belonging wholly to citizens thereof; and vessels which may be captured in war by citizens of the United States and lawfully condemned as prize, or which may be adjudged to be forfeited for a breach of the laws of the United States; and seagoing vessels, whether steam or sail, which have been certified by the Steamboat-Inspection Service as safe to carry dry and perishable cargo, not more than five years old at the time they apply for registry, wherever built, which are to engage only in trade with foreign countries or with the Philippine



Islands and the islands of Guam and Tutuila, being wholly owned by citizens of the United States or corporations organized and chartered under the laws of the United States or of any State thereof, the president and managing directors of which shall be citizens of the United States or corporations organized and chartered under the laws of the United States or of any State thereof, the President and managing directors of which shall be citizens of the United States, and no others, may be registered as directed in this title. Foreign-built vessels registered pursuant to this Act shall not engage in the coastwise trade: **Provided**, That a foreign-built yacht, pleasure boat, or vessel not used or intended to be used for trade admitted to American registry pursuant to this section shall not be exempt from the collection of ad valorem duty provided in section thirty-seven of the Act approved August fifth, nineteen hundred and nine, entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.' That all materials of foreign production which may be necessary for the construction or repair of vessels built in the United States and all such materials necessary for the building or repair of their machinery and all articles necessary for their outfit and equipment may be imported into the United States free of duty under such regulations as the Secretary of the Treasury may prescribe: **Provided further**, That such vessels so admitted under the provisions of this section may contract with the Postmaster General under the Act of March third, eighteen hundred and ninety-one, entitled 'An Act to provide for ocean mail service between the United States and foreign ports, and to promote commerce,' so long as such vessels shall in all respects comply with the provisions and requirements of said Act."

Tolls may be based upon gross or net registered tonnage, displacement tonnage, or otherwise, and may be based on one form of tonnage for warships and another for ships of commerce. The rate of tolls may be lower upon vessels in ballast than upon vessels carrying passengers or cargo. When based upon net registered tonnage for ships of commerce the tolls shall not exceed one dollar and twenty-five cents per net registered ton, nor be less, other than for vessels of the United States and its citizens, than the estimated proportionate cost of the actual maintenance and operation of the canal subject, however, to the provisions of article nineteen of the convention between the United States and the Republic of Panama, entered into November eighteenth, nineteen hundred and three. If the tolls shall not be based upon net registered tonnage, they shall not exceed the equivalent of one dollar and twenty-five cents per net registered ton as nearly as the same may be determined, nor be less than the equivalent of seventy-five cents per net registered ton. The toll for each passenger shall not be more than one dollar and fifty cents. The President is authorized to make and from time to time amend regulations governing the operation of the Panama Canal, and the passage and control of vessels through the same or any part thereof, including the locks and approaches thereto, and all rules and regulations affecting pilots and pilotage in the canal or the approaches thereto through the adjacent waters.

Such regulations shall provide for prompt adjustment by agreement and immediate payment of claims for damages which may arise from injury to vessels, cargo, or passengers from the passing of vessels through the locks under the control of those operating them

under such rules and regulations. In case of disagreement suit may be brought in the district court of the Canal Zone against the governor of the Panama Canal. The hearing and disposition of such cases shall be expedited and the judgment shall be immediately paid out of any moneys appropriated or allotted for canal operation.

The President shall provide a method for the determination and adjustment of all claims arising out of personal injuries to employees thereafter occurring while directly engaged in actual work in connection with the construction, maintenance, operation, or sanitation of the canal or of the Panama Railroad, or of any auxiliary canals, locks, or other works necessary and convenient for the construction, maintenance, operation, or sanitation of the canal, whether such injuries result in death or not, and prescribe a schedule of compensation therefor, and may revise and modify such method and schedule at any time; and such claims to the extent they shall be allowed on such adjustment, if allowed at all, shall be paid out of moneys hereafter appropriated for that purpose or out of the funds of the Panama Railroad Company, if said company was responsible for said injury, as the case may require. And after such method and schedule shall be provided by the President, the provisions of the Act entitled "An Act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment," approved May thirtieth, nineteen hundred and eight, and of the Act entitled "An Act relating to injured employees on the Isthmian Canal," approved February twenty-fourth, nineteen hundred and nine, shall not apply to personal injuries thereafter received and claims for which are subject to determination and adjustment as provided in this section.

Sec. 6. That the President is authorized to cause to be erected, maintained, and operated, subject to the International Convention and the Act of Congress to regulate radio-communication, at suitable places along the Panama Canal and the coast adjacent to its two terminals, in connection with the operation of said canal, such wireless telegraphic installations as he may deem necessary for the operation, maintenance, sanitation, and protection of said canal, and for other purposes. If it is found necessary to locate such installations upon territory of the Republic of Panama, the President is authorized to make such agreement with said Government as may be necessary, and also to provide for the acceptance and transmission, by said system, of all private and commercial messages, and those of the Government of Panama, on such terms and for such tolls as the President may prescribe: **Provided**, That the messages of the Government of the United States and the departments thereof, and the management of the Panama Canal, shall always be given precedence over all other messages. The President is also authorized, in his discretion, to enter into such operating agreements or leases with any private wireless company or companies as may best insure freedom from interference with the wireless telegraphic installations established by the United States. The President is also authorized to establish, maintain, and operate, through the Panama Railroad Company or otherwise, dry docks, repairs shops, yard, docks, wharves, warehouses, storehouses, and other necessary facilities and appurtenances for the purpose of providing coal and other materials, labor, repairs, and supplies for vessels of the Government of the United States and, incidentally, for supplying such at reasonable prices to passing vessels, in accordance



with appropriations hereby authorized to be made from time to time by Congress as a part of the maintenance and operation of the said canal. Moneys received from the conduct of said business may be expended and reinvested for such purposes without being covered into the Treasury of the United States; and such moneys are hereby appropriated for such purpose, but all deposits of such funds shall be subject to the provisions of existing law relating to the deposit of other public funds of the United States, and any net profits accruing from such business shall annually be covered into the Treasury of the United States. Monthly reports of such receipts and expenditures shall be made to the President by the persons in charge, and annual reports shall be made to the Congress.

Sec. 7. That the governor of the Panama Canal shall, in connection with the operation of such canal, have official control and jurisdiction over the Canal Zone and shall perform all duties in connection with the civil government of the Canal Zone, which is to be held, treated, and governed as an adjunct of such Panama Canal. Unless in this Act otherwise provided all existing laws of the Canal Zone referring to the civil governor or the civil administration of the Canal Zone shall be applicable to the governor of the Panama Canal, who shall perform all such executive and administrative duties required by existing law. The President is authorized to determine or cause to be determined what towns shall exist in the Canal Zone and subdivide and from time to time resubdivide said Canal Zone into subdivisions, to be designated by name or number, so that there shall be situated one town in each subdivision, and the boundaries of each subdivision shall be clearly defined. In each town there shall be a magistrate's court with exclusive original jurisdiction coextensive with the subdivision in which it is situated of all civil cases in which the principal sum claimed does not exceed three hundred dollars, and all criminal cases wherein the punishment that may be imposed shall not exceed a fine of one hundred dollars, or imprisonment not exceeding thirty days, or both, and all violations of police regulations and ordinances and all actions involving possession or title to personal property or the forcible entry and detainer of real estate. Such magistrates shall also hold preliminary investigations in charges of felony and offenses under section ten of this Act, and commit or bail in bailable cases to the district court. A sufficient number of magistrates and constables, who must be citizens of the United States, to conduct the business of such courts, shall be appointed by the governor of the Panama Canal for terms of four years and until their successors are appointed and qualified, and the compensation of such persons shall be fixed by the President, or by his authority, until such time as Congress may by law regulate the same. The rules governing said courts and prescribing the duties of said magistrates and constables, oaths and bonds, the times and places of holding such courts, the disposition of fines, costs, forfeitures, enforcements of judgments, providing for appeals therefrom to the district court, and the disposition, treatment, and pardon of convicts shall be established by order of the President. The governor of the Panama Canal shall appoint all notaries public, prescribe their powers and duties, their official seal, and the fees to be charged and collected by them.

Sec. 8. That there shall be in the Canal Zone one district court with two divisions, one including Balboa and the other including Cristobal; and one district judge of the said district, who shall hold

his court in both divisions at such time as he may designate by order, at least once a month in each division. The rules of practice in such district court shall be prescribed or amended by order of the President. The said district court shall have original jurisdiction of all felony cases, of offenses arising under section ten of this Act, all causes in equity; admiralty and all cases at law involving principal sums exceeding three hundred dollars and all appeals from judgments rendered in magistrates' courts. The jurisdiction in admiralty herein conferred upon the district judge and the district court shall be the same that is exercised by the United States district judges and the United States district courts, and the procedure and practice shall also be the same. The district court or the judge thereof shall also have jurisdiction of all other matters and proceedings not herein provided for which are now within the jurisdiction of the Supreme Court of the Canal Zone, of the Circuit Court of the Canal Zone, the District Court of the Canal Zone, or the judges thereof. Said judge shall provide for the selection, summoning, serving, and compensation of jurors from among the citizens of the United States, to be subject to jury duty in either division of such district, and a jury shall be had in any criminal case or civil case at law originating in said court on the demand of either party. There shall be a district attorney and a marshal for said district. It shall be the duty of the district attorney to conduct all business, civil and criminal, for the Government, and to advise the governor of the Panama Canal on all legal questions touching the operation of the canal and the administration of civil affairs. It shall be the duty of the marshal to execute all process of the court, preserve order therein, and do all things incident to the office of marshal. The district judge, the district attorney, and the marshal shall be appointed by the President, by and with the advice and consent of the Senate, for terms of four years each, and until their successors are appointed and qualified, and during their terms of office shall reside within the Canal Zone, and shall hold no other office nor serve on any official board or commission nor receive any emoluments except their salaries. The district judge shall receive the same salary paid the district judges of the United States, and shall appoint the clerk of said court, and may appoint one assistant when necessary, who shall receive salaries to be fixed by the President. The district judge shall be entitled to six weeks' leave of absence each year with pay. During his absence or during any period of disability or disqualification from sickness or otherwise to discharge his duties the same shall be temporarily performed by any circuit or district judge of the United States who may be designated by the President, and who, during such service, shall receive the additional mileage and per diem allowed by law to district judges of the United States when holding court away from their homes. The district attorney and the marshal shall be paid each a salary of five thousand dollars per annum.

Sec. 9. That the records of the existing courts and all causes, proceedings, and criminal prosecutions pending therein as shown by the dockets thereof, except as herein otherwise provided, shall immediately upon the organization of the courts created by this Act be transferred to such new courts having jurisdiction of like cases, be entered upon the dockets thereof, and proceed as if they had originally been brought therein, whereupon all the existing courts, except

the supreme court of the Canal Zone, shall cease to exist. The President may continue the supreme court of the Canal Zone and retain the judges thereof in office for such time as to him may seem necessary to determine finally any causes and proceedings which may be pending therein. All laws of the Canal Zone imposing duties upon the clerks or ministerial officers of existing courts shall apply and impose such duties upon the clerks and ministerial officers of the new courts created by this Act having jurisdiction of like cases, matters, and duties.

All existing laws in the Canal Zone governing practice and procedure in existing courts shall be applicable and adapted to the practice and procedure in the new courts.

The Circuit Court of Appeals of the Fifth Circuit of the United States shall have jurisdiction to review, revise, modify, reverse, or affirm the final judgments and decrees of the District Court of the Canal Zone and to render such judgments as in the opinion of the said appellate court should have been rendered by the trial court in all actions and proceedings in which the Constitution, or any statute, treaty, title, right, or privilege of the United States, is involved and a right thereunder denied, and in cases in which the value in controversy exceeds one thousand dollars, to be ascertained by the oath of either party, or by other competent evidence, and also in criminal causes wherein the offense charged is punishable as a felony. And such appellate jurisdiction, subject to the right of review by or appeal to the Supreme Court of the United States as in other cases authorized by law, may be exercised by said circuit court of appeals in the same manner, under the same regulations, and by the same procedure as nearly as practicable as is done in reviewing the final judgments and decrees of the district courts of the United States.

Sec. 10. That after the Panama Canal shall have been completed and opened for operation the governor of the Panama Canal shall have the right to make such rules and regulations, subject to the approval of the President, touching the right of any person to remain upon or pass over any part of the Canal Zone as may be necessary. Any person violating any of such rules or regulations shall be guilty of a misdemeanor, and on conviction in the District Court of the Canal Zone shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding a year, or both, in the discretion of the court. It shall be unlawful for any person, by any means or in any way, to injure or obstruct, or attempt to injure or obstruct, any part of the Panama Canal or the locks thereof or the approaches thereto. Any person violating this provision shall be guilty of a felony, and on conviction in the District Court of the Canal Zone shall be punished by a fine not exceeding ten thousand dollars or by imprisonment not exceeding twenty years, or both, in the discretion of the court. If the act shall cause the death of any person within a year and a day thereafter, the person so convicted shall be guilty of murder and shall be punished accordingly.

Sec. 11. That section five of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby amended by adding thereto a new paragraph at the end thereof, as follows:

"From and after the first day of July, nineteen hundred and fourteen, it shall be unlawful for any railroad company or other common carrier subject to the Act to regulate commerce to own, lease, operate,

control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense."

Jurisdiction is hereby conferred on the Interstate Commerce Commission to determine questions of fact as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of this section and pray for an order permitting the continuance of any vessel or vessels already in operation, or for the purpose of asking an order to install new service not in conflict with the provisions of this paragraph. The commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said commission shall be final.

If the Interstate Commerce Commission shall be of the opinion that any such existing specified service by water other than through the Panama Canal is being operated in the interests of the public and is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water under consideration, the Interstate Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond July first, nineteen hundred and fourteen. In every case of such extension the rates, schedules, and practices of such water carrier shall be filed with the Interstate Commerce Commission and shall be subject to the act to regulate commerce and all amendments thereto in the same manner and to the same extent as in the railroad or other common carrier controlling such water carrier or interested in any manner in its operation: **Provided**, Any application for extension under the terms of this provision filed with the Interstate Commerce Commission prior to July first, nineteen hundred and fourteen, but for any reason not heard and disposed of before said date, may be considered and granted thereafter.

No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through said canal if such ship is owned, chartered, operated, or controlled by any person or company which is doing business in violation of the provisions of the Act of Congress approved July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," or the provisions of sections seventy-three to seventy-seven, both inclusive, of an Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," or the provisions of any other Act of Congress amending or supplementing the said Act of July second, eighteen



hundred and ninety, commonly known as the Sherman Antitrust Act, and amendments thereto, or said sections of the Act of August twenty-seventh, eighteen hundred and ninety-four. The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owners or operators of such ship are parties. Suit may be brought by any shipper or by the Attorney General of the United States.

That section of said Act to regulate commerce, as heretofore amended, is hereby amended by adding a new paragraph at the end thereof, as follows:

"When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single state, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the Act to regulate commerce, as amended June eighteenth, nineteen hundred and ten:

"(a) To establish physical connection between the lines of the rail carrier and the dock of the water carrier by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of its right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a spur track or tracks to the dock. This provision shall only apply where such connection is reasonably practicable, can be made with safety to the public, and where the amount of business to be handled is sufficient to justify the outlay.

"The commission shall have full authority to determine the terms and conditions upon which these connecting tracks, when constructed, shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier. The provisions of this paragraph shall extend to cases where the dock is owned by other parties than the carrier involved.

"(b) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced.

"(c) To establish maximum proportional rates by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

"(d) If any rail carrier subject to the Act to regulate commerce enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Interstate Commerce Commission may require such railway to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country."

The orders of the Interstate Commerce Commission relating to this section shall only be made upon formal complaint or in proceedings instituted by the commission of its own motion and after full hearing. The orders provided for in the two amendments to the Act to regulate commerce enacted in this section shall be served in the same manner and enforced by the same penalties and proceedings as are the orders of the commission made under the provisions of section fifteen of the Act to regulate commerce, as amended June eighteen, nineteen hundred and ten, and they may be conditioned for the payment of any sum or the giving of security for the payment of any sum or the discharge of any obligation which may be required by the terms of said order.

Sec. 12. That all laws and treaties relating to the extradition of persons accused of crime in force in the United States, to the extent that they may not be in conflict with or superseded by any special treaty entered into between the United States and the Republic of Panama with respect to the Canal Zone, and all laws relating to the rendition of fugitives from justice as between the several States and Territories of the United States, shall extend to and be considered in force in the Canal Zone, and for such purposes and such purposes only the Canal Zone shall be considered and treated as an organized Territory of the United States.

Sec. 13. That in time of war in which the United States shall be engaged, or when, in the opinion of the President, war is imminent, such officer of the Army as the President may designate shall, upon the order of the President, assume and have exclusive authority and jurisdiction over the operation of the Panama Canal and all of its adjuncts, appendants, and appurtenances, including the entire control and government of the Canal Zone, and during a continuance of such condition the governor of the Panama Canal shall, in all respects and particulars as to the operation of such Panama Canal, and all duties, matters, and transactions affecting the Canal Zone, be subject to the order and direction of such officer of the Army.

Sec. 14. That this Act shall be known as, and referred to as, the Panama Canal Act, and the right to alter, amend, or repeal any or all of its provisions or to extend, modify, or annul any rule or regulation made under its authority is expressly reserved.

#### Amendment of March 1, 1913.

37 Stats. at Large, 701.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended, be further amended by adding thereto a new section, to be known as section nineteen a, and to read as follows:

"Sec. 19a. That the commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act. To enable the commission to make such investigations and report, it is authorized to employ such experts and other assistants as may be necessary. The commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The commission shall make an inventory which shall list the property of every common carrier subject to the provisions of this Act in



detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

"First. In such investigation said commission shall ascertain and report in detail as to each piece of property owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value, and each of the foregoing cost values.

"Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value.

"Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

"Fourth. In ascertaining the original cost to date of the property of such common carrier the commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any increases or decreases of stocks, bonds, or other securities, in any reorganization; upon moneys received by any such corporation by reason of any issues of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the commission upon the expenditure of all moneys and the purposes for which the same were expended.

"Fifth. The commission shall ascertain and report the amount and value of any aid, gift, grant of right of way, or donation, made to any such common carrier, or to any previous corporation operating such property, by the Government of the United States or by any State, county, or municipal government, or by individuals, associations, or corporations; and it shall also ascertain and report the grants of land to any such common carrier, or any previous corporation operating such property, by the Government of the United States, or by any State, county, or municipal government, and the amount of money derived from the sale of any portion of such grants and the value of the unsold portion thereof at the time acquired and at the present time, also, the amount and value of any concession and allowance made by such common carrier to the Government of the United States, or to any State, county, or municipal government in consideration of such aid, gift, grant, or donation.

"Except as herein otherwise provided, the commission shall have

power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that constitute the ascertained value, and such investigation shall show the value of the property of every common carrier as a whole and separately the value of its property in each of the several States and Territories and the District of Columbia, classified and in detail as herein required.

"Such investigation shall be commenced within sixty days after the approval of this Act and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

"Every common carrier subject to the provisions of this Act shall furnish to the commission or its agents from time to time and as the commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the commission free access to its right of way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to cooperate with and aid the commission in the work of the valuation of its property in such further particulars and to such extent as the commission may require and direct, and all rules and regulations made by the commission for the purpose of administering the provisions of this section and section twenty of this Act shall have the full force and effect of law. Unless otherwise ordered by the commission, with the reasons therefor, the records and data of the commission shall be open to the inspection and examination of the public.

"Upon the completion of the valuation herein provided for the commission shall thereafter in like manner keep itself informed of all extensions and improvements or other changes in the condition and value of the property of all common carriers, and shall ascertain the value thereof, and shall from time to time, revise and correct its valuations, showing such revision and correction classified and as a whole and separately in each of the several States and Territories and the District of Columbia, which valuations, both original and corrected, shall be tentative valuations and shall be reported to Congress at the beginning of each regular session.

"To enable the commission to make such changes and corrections in its valuations of each class of property, every common carrier subject to the provisions of this Act shall make such reports and furnish such information as the commission may require.

"Whenever the commission shall have completed the tentative valuation of the property of any common carrier, as herein directed, and before such valuation shall become final, the commission shall give notice by registered letter to the said carrier, the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow thirty days in which to file a protest of the same with the commission. If no protest is filed within thirty days, said valuation shall become final as of the date thereof.

"If notice of protest is filed the commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this Act the commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the Act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the Act approved February fourth, eighteen hundred and eighty-seven, commonly known as "the Act to regulate commerce," and the various Acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

"If upon the trial of any action involving a final value fixed by the commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto and substantially affecting said value, the court, before proceeding to render judgment shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend, or rescind any order which it has made involving said final value, and shall report its action thereon to said court within the time fixed by the court. If the commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

"The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with all the requirements of this section and in the manner prescribed by the commission such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in section sixteen of the Act to regulate commerce.

"That the district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the commission, alleging a failure to comply with or a violation of any of the provisions of this section by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of this section."

#### **Amendment of March 4, 1915.**

By the Cummins Amendment of March 4, 1915, section 20 of the Act to Regulate Commerce was amended to read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of section seven of an Act entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June twenty-ninth, nineteen hundred and six, as reads as follows, to-wit:

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered, or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law," be, and the same is hereby, amended so as to read as follows, to-wit:

That any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is



hereby declared to be unlawful and void: **Provided**, however, That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules: **Provided further**, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: **Provided further**, That it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: **Provided, however**, That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.

Sec. 2. That this Act shall take effect and be in force from ninety days after its passage.

38 U. S. Stats. at Large, 1197.

#### **Amendment of August 9, 1916—Cummins Amendment.**

That any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery

or representation or agreement as to the value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void: **Provided, however,** That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not so far as relates to values, be held to be a violation of section ten of this Act to regulate commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary live stock" shall include all cattle, swine, sheep, goats, horses and mules, except such as are chiefly valuable for breeding, racing, show purposes or other special uses: **Provided further,** That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: **Provided further,** That it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: **Provided, however,** That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.

39 U. S. Stats. at Large, 441.

#### **Amendment of August 29, 1916.**

Section six of an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended March second, eighteen hundred and eighty-nine, and June twenty-ninth, nineteen hundred and six, which reads:

That in time of war or threatened war preference and precedence shall, upon demand of the President of the United States, be given over all other traffic for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic, be amended to read as follows:



That in time of war or threatened war preference and precedence shall, upon demand of the President of the United States, be given over all other traffic for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic. And in time of peace shipments consigned to agents of the United States for its use shall be delivered by the carriers as promptly as possible and without regard to any embargo that may have been declared, and no such embargo shall apply to shipments so consigned.

**Amendment of August 6, 1917.**

"That section 24 of an Act entitled 'An Act to regulate commerce,' approved Feb. 4, 1887, as amended, be further amended to read as follows:

"Sec. 24. That the Interstate Commerce Commission is hereby enlarged so as to consist of nine members, with terms of seven years, and each shall receive \$10,000 compensation annually. The qualifications of the members and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring Dec. 31, 1921, and one for a term expiring Dec. 31, 1922. The terms of the present commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. Not more than five commissioners shall be appointed from the same political party."

"Sec. 2. That section 17 of said Act, as amended, be further amended to read as follows:

"Sec. 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. The Commission shall have an official seal, which shall be judicially noticed. Any member of the Commission may administer oaths and affirmations and sign subpoenas. A majority of the Commission shall constitute a quorum for the transaction of business, except as may be otherwise herein provided, but no commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. The Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any division of the Commission, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before the Commission or any division thereof and be heard in person or by attorney. Every vote and official act of the Commission, or of any division thereof, shall be entered of record, and its proceedings shall be public upon the request of any party interested.

"The Commission is hereby authorized by its order to divide the members thereof into as many divisions as it may deem necessary, which may be changed from time to time. Such divisions shall be

denominated, respectively, division 1, division 2, etc. Any commissioner may be assigned to and may serve upon such division or divisions as the Commission may direct, and the senior in service of the commissioners constituting any of said division shall act as chairman thereof. In case of vacancy in any division, or of absence or inability to serve thereon of any commissioner thereto assigned, the chairman of the Commission, or any commissioner designated by him for that purpose, may temporarily serve on said division until the Commission shall otherwise order.

"The Commission may by order direct that any of its work, business, or functions arising under this Act, or under any Act amendatory thereof, or supplemental thereto, or under any amendment which may be made to any of said Acts, or under any other Act or joint resolution which has been or may hereafter be approved, or in respect of any matter which has been or may be referred to the Commission by Congress or by either branch thereof, be assigned or referred to any of said divisions for action thereon, and may by order at any time amend, modify, supplement, or rescind any such direction. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Commission.

"In conformity with and subject to the order or orders of the Commission in the premises, each division so constituted shall have power and authority by a majority thereof to hear and determine, order, certify, report, or otherwise act as to any of said work, business, or functions so assigned or referred to it for action by the Commission, and in respect thereof the division shall have all the jurisdiction and powers now or then conferred by law upon the Commission, and be subject to the same duties and obligations. Any order, decision, or report made or other action taken by any of said divisions in respect of any matters so assigned or referred to it shall have the same force and effect, and may be made, evidenced and enforced in the same manner as if made or taken by the Commission, subject to rehearing by the Commission, as provided in section 16a hereof for rehearing cases decided by the Commission. The secretary and seal of the Commission shall be the secretary and seal of each division thereof.

"In all proceedings before any such divisions relating to the reasonableness of rates or to alleged discriminations not less than three members shall participate in the consideration and decision; and in all proceedings relating to the valuation of railway property under the Act entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved Feb. 4, 1887, and all Acts amendatory thereof, by providing for a valuation of the several classes of property subject thereto and securing information concerning their stocks, bonds and other securities," approved March 1, 1913, not less than five members shall participate in the consideration and decision.

"The salary of the secretary of the Commission shall be \$5,000 per annum.

"Nothing in this section contained, or done pursuant thereto, shall be deemed to divest the Commission of any of its powers."

"Sec. 3. So much of section 18 of the Act to regulate commerce as fixes the salary of the secretary of the Commission is hereby repealed.

"Sec. 4. That paragraph 2, section 15, of the Act to regulate commerce, approved Feb. 4, 1887, as amended, be further amended

by adding the following: 'Provided further, until January 1, 1920, no increased rate, fare, charge or classification shall be filed except after approval thereof has been secured from the Commission. Such approval may, in the discretion of the Commission, be given without formal hearing, and in such case shall not affect any subsequent proceeding relative to such rate, fare, charge, or classification.'

#### Amendment of August 10, 1917.

"That section 1 of the Act entitled 'An Act to regulate commerce,' approved Feb. 4, 1887, as heretofore amended, be further amended by adding thereto the following:

"That on and after the approval of this Act any person or persons who shall, during the war in which the United States is now engaged, knowingly and willfully, by physical force or intimidation by threats or physical force obstruct or retard, or aid in obstructing or retarding, the orderly conduct or movement in the United States of interstate or foreign commerce, or the orderly make-up or movement or disposition of any train, or the movement or disposition of any locomotive, car, or other vehicle on any railroad or elsewhere in the United States engaged in interstate or foreign commerce shall be deemed guilty of a misdemeanor, and for every such offense shall be punishable by a fine of not exceeding \$100 or by imprisonment for not exceeding six months, or by both such fine and imprisonment; and the President of the United States is hereby authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of the passage of the mail, or of the orderly conduct or movement of interstate or foreign commerce in any part of the United States, or of any train, locomotive, car, or other vehicle upon any railroad or elsewhere in the United States engaged in interstate or foreign commerce: Provided, That nothing in this section shall be construed to repeal, modify, or affect either section 6 or section 20 of an Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved Oct. 15, 1914.

"That during the continuance of the war in which the United States is now engaged the President is authorized, if he finds it necessary for the national defense and security, to direct that such traffic or such shipments of commodities as, in his judgment, may be essential to the national defense and security shall have preference or priority in transportation by any common carrier by railroad, water or otherwise. He may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them, and for any such purpose he is hereby authorized to issue orders direct, or through such person or persons as he may designate for the purpose or through the Interstate Commerce Commission. Officials of the United States, when so designated, shall receive no compensation for their services rendered hereunder. Persons not in the employ of the United States so designated shall receive such compensation as the President may fix. Suitable offices may be rented and all necessary expenses, including compensation of persons so designated, shall be paid as directed by the President out of funds which may have been or may be provided to meet expenditures for the national security and defense. The common carriers subject to the Acts to regulate commerce, or as many of them as desire so

to do, are hereby authorized without responsibility or liability on the part of the United States, financial or otherwise, to establish and maintain in the city of Washington during the period of the war an agency empowered by such carriers as join in the arrangement to receive on behalf of them all notice and service of such orders and directions as may be issued in accordance with this Act, and service upon such agency shall be good service as to all the carriers joining in the establishment thereof. And it shall be the duty of any and all the officers, agents, or employes of such carriers by railroad or water or otherwise to obey strictly and conform promptly to such orders, and failure knowingly and willfully to comply therewith, or to do or perform whatever is necessary to the prompt execution of such orders, shall render such officers, agent, or employes, guilty of a misdemeanor, and any such officer, agent, or employe shall, upon conviction, be fined not more than \$5,000 or imprisoned not more than one year, or both, in the discretion of the court. For the transportation of persons or property in carrying out the orders and directions of the President, just and reasonable rates shall be fixed by the Interstate Commerce Commission; and if the transportation be for the government of the United States, it shall be paid for currently or monthly by the Secretary of the Treasury out of any funds not otherwise appropriated. Any carrier complying with any such order or direction for preference of priority herein authorized shall be exempt from any and all provisions in existing law imposing civil or criminal pains, penalties, obligations, or liabilities upon carriers by reason of giving preference or priority in compliance with such order or direction.”

### SUPPLEMENTARY ACTS.

#### Supplementary Act of February 11, 1893.

Section 12 was further supplemented by the Amendment of February 11, 1893, which provides as follows:

That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled “An act to regulate commerce,” approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. **But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: Provided, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.**

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs,



contracts, agreements and documents if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.

27 U. S. Stats. at Large, 443.

#### Supplementary Act of February 11, 1903.

The Act to Regulate Commerce was further supplemented and enforced by the enactment of the Expedition Act of February 11, 1903, which read as follows:

That in any suit in equity pending or hereafter brought in any circuit court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such cases shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said court, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select or, in case the full court shall not at any time be made up by reason of the necessary absence or disqualification of one or more of the said circuit judges, the justice of the Supreme Court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. In the event the judges sitting in such case shall be equally divided in opinion as to the decision or disposition of said cause, or in the event that a majority of said judges shall be unable to agree upon the judgment, order, or decree finally disposing of said case in said court which should be entered in said cause, then they shall immediately certify that fact to the Chief Justice of the United States, who shall at once designate and appoint some circuit judge to sit with said judges and to assist in determining said cause. Such order of the Chief Justice shall be immediately transmitted to the clerk of the circuit court in which said cause is pending, and shall be entered upon the minutes of said court. Thereupon said cause shall at once be set down for reargument and the parties thereto notified in writing by the clerk of said court of the action of the court and the date fixed for the reargument thereof. The provisions of this section shall apply to all causes and proceedings in all courts now pending, or which may hereafter be brought.

Sec. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts, wherein the United States is complainant, including cases submitted

but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: **Provided**, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this Act takes effect the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

See Elkins Act of February 19, 1903, further amending sections 2, 6, and 10 of Act to Regulate Commerce.

32 Stats. at Large, 823.

#### **Supplementary Act of October 15, 1914.**

Sec. 1. That "anti-trust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: **Provided**, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Sec. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: **Provided**, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the



same or different communities made in good faith to meet competition: And provided further, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Sec. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

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Sec. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short

line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: **Provided**, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Sec. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: **Provided**, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares: **Provided further**, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: **And provided further**, That nothing contained in this section shall forbid a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two

or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

Sec. 9. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than \$500 or confined in the penitentiary not less than one year nor more than ten years or both, in the discretion of the court.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Sec. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or

association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said Commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

If any common carrier shall violate this section it shall be fined not exceeding \$25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding \$5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

Sec. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the Commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven, and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The persons so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the Commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission or board. If upon such hearing the Commission or board, as the case may be, shall be of the



opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the Commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person fails or neglects to obey such order of the Commission or board while the same is in effect, the Commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission or board. The findings of the Commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission or board, the court may order such additional evidence to be taken before the Commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the Commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the Commission or board be set aside. A copy of such petition shall be forthwith served upon the Commission or board, and thereupon the Commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or board as in the case of an application

by the Commission or board for the enforcement of its order, and the findings of the Commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the Commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the Commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.

Complaints, orders, and other processes of the Commission or board under this section may be served by any one duly authorized by the Commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

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Sec. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

Sec. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently



granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: **Provided**, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Sec. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

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Sec. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Sec. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, who shall, by personal service or otherwise, have received actual notice of the same.

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Sec. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

38 U. S. Stats. at Large, 730.

**Act of August 29, 1916,—Bills of Lading Act.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That bills of lading issued by a common carrier for the transportation of goods in any Territory of the United States, or the District of Columbia, or from a place in a state to a place in a foreign country, or from a place in one state to a place in another state, or from a place in one state to a place in the same state through another state or foreign country, shall be governed by this Act.

Sec. 2. That a bill in which it is stated that the goods are consigned or destined to a specified person is a straight bill.

Sec. 3. That a bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill. Any provision in such a bill or in any notice, contract, rule, regulation, or tariff that it is non-negotiable shall be null and void and shall not effect its negotiability within the meaning of this Act unless upon its face and in writing agreed to by the shipper.

Sec. 4. That order bills issued in a State for the transportation of goods to any place in the United States on the continent of North America, except Alaska and Panama, shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts: **Provided, however,** That nothing contained in this section shall be interpreted or construed to forbid the issuing of order bills in parts or sets for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries, or to impose the liabilities set forth in this section for so doing.

Sec. 5. That when more than one order bill is issued in a state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska and Panama, the word "duplicate," or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill: **Provided, however,** That nothing contained in this section shall in such case for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries be interpreted or construed so as to require the placing of the word "duplicate" thereon, or to impose the liabilities set forth in this section for the failure so to do.

Sec. 6. That a straight bill shall have placed plainly upon its face by the carrier issuing it "nonnegotiable" or "not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character.

Sec. 7. That the insertion in an order bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

Sec. 8. That a carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods or, if the bill is an order bill, by the holder thereof, if such demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) Possession of the bill of lading and an offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is an order bill; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods, in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

Sec. 9. That a carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is—

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a straight bill for the goods, or

(c) A person in possession of an order bill for the goods, by the terms of which the goods are deliverable to his order; or which has been indorsed to him, or in blank by the consignee, or by the mediate or immediate indorsee of the consignee.

Sec. 10. That where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Such request or information, to be effective within the meaning of this section, must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence to stop delivery of the goods.

Sec. 11. That except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers goods for which an order bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier and notwithstanding delivery was made to the person entitled thereto.

Sec. 12. That except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers part of the goods for which an order bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods had been delivered with a description which may be in general terms either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

Sec. 13. That any alteration, addition or erasure in a bill after its issuance without authority from the carrier issuing the same, either in writing or noted on the bill, shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor.

Sec. 14. That where an order has been lost, stolen, or destroyed a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss, theft, or destruction and upon the giving of a bond, with sufficient surety, to be approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees: **Provided**, a voluntary indemnifying bond without order of court shall be binding on the parties thereto.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the order bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

Sec. 15. That a bill, upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed, plainly shall impose upon the carrier issuing the same liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability.

Sec. 16. That no title to goods or right to their possession asserted by a carrier for his own benefit shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

Sec. 17. That if more than one person claim the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods or as an original suit, whichever is appropriate.

Sec. 18. That if some one other than the consignee or the person in possession of the bill has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill or to the adverse



claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

Sec. 19. That except as provided in the two preceding sections and in section nine, no right or title of a third person, unless enforced by legal process, shall be a defense to an action brought by the consignee of a straight bill or by the holder of an order bill against the carrier for failure to deliver the goods on demand.

Sec. 20. That when goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation, or tariff, "Shipper's weight, load, and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

Sec. 21. That when package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting in the bill of lading the words "Shipper's weight, load, and count," or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the non-receipt or by the misdescription of the goods in the bill of lading: **Provided, however,** where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words "Shipper's weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void, and as if not inserted therein.

Sec. 22. That if a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several States and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transit or (b) the holder of an order bill, who has given

value in good faith, relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

Sec. 23. That if goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner, and an order bill is issued by them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise or be levied upon under an execution unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

Sec. 24. That a creditor whose debtor is the owner of an order bill shall be entitled to such aid from the courts of appropriate jurisdiction by injunction and otherwise in attaching such bill or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

Sec. 25. That if an order bill is issued the carrier shall have a lien on the goods therein mentioned for all charges on those goods for freight, storage, demurrage, and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill and all other charges incurred in transportation and delivery unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

Sec. 26. That after goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods themselves to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be an order bill.

Sec. 27. That an order bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank, for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

Sec. 28. That an order bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

Sec. 29. That a bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. A straight bill cannot be negotiated free from existing equities, and the indorsement of such bill gives the transferee no additional right.

Sec. 30. That an order bill may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver



the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

Sec. 31. That a person to whom an order bill has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value; and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

Sec. 32. That a person to whom a bill has been transferred, but not negotiated, acquires thereby as against the transferor the title to the goods, subject to the terms of any agreement with the transferor. If the bill is a straight bill such person also acquires the right to notify the carrier of the transfer to him of such bill and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a straight bill the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified, and no notification shall be effective until the officer or agent to whom it is given has had time, with the exercise of reasonable diligence, to communicate with the agent or agents having actual possession or control of the goods.

Sec. 33. That where an order bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiations shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

Sec. 34. That a person who negotiates or transfers for value a bill by indorsement or delivery, unless a contrary intention appears, warrants—

(a) That the bill is genuine;  
 (b) That he has a legal right to transfer it;  
 (c) That he has knowledge of no fact which would impair the validity or worth of the bill;

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a bill the goods represented thereby.

Sec. 35. That the indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations.

Sec. 36. That a mortgagee or pledgee or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or warrant the genuineness of such bill or the quantity or quality of the goods therein described.

Sec. 37. That the validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft, or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, loss, theft, or conversion.

Sec. 38. That where a person, having sold, mortgaged, or pledged goods which are in a carrier's possession and for which an order bill has been issued, or having sold, mortgaged or pledged the order bill representing such goods, continues in possession of the order bill, the subsequent negotiation thereof by that person under any sale pledge, or under disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

Sec. 39. That where an order bill has been issued for goods no seller's lien or right of stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transit. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

Sec. 40. That, except as provided in section thirty-nine, nothing in this Act shall limit the rights and remedies of a mortgage or lien holder whose mortgage or lien on goods would be valid, apart from this Act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

Sec. 41. That any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment among the several States or with foreign nations, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this Act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each

offense by imprisonment not exceeding five years, or by a fine not exceeding \$5,000, or both.

Sec. 42. First, That in this Act, unless the context of subject matter otherwise requires—

“Action” includes counterclaim, set-off, and suit in equity.

“Bill” means bill of lading governed by this Act.

“Consignee” means the person named in the bill as the person to whom delivery of the goods is to be made.

“Consignor” means the person named in the bill as the person from whom the goods have been received for shipment.

“Goods” means merchandise or chattels in course of transportation or which have been or are about to be transported.

“Holder” of a bill means a person who has both actual possession of such bill and a right of property therein.

“Order” means an order by indorsement on the bill.

“Person” includes a corporation or partnership, or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee and to take as pledgee.

“State” includes any Territory, District, insular possession or isthmian possession.

Sec. 43. That the provisions of this Act do not apply to bills made and delivered prior to the taking effect thereof.

Sec. 44. That the provisions and each part thereof and the sections and each part thereof of this Act are independent and severable, and the declaring of any provision or part thereof, or provisions or part thereof, or section or part thereof, or sections or part thereof, unconstitutional shall not impair or render unconstitutional any other provision or part thereof or section or part thereof.

Sec. 45. That this Act shall take effect and be in force on and after the first day of January next after its passage.

39 U. S. Stats. at Large, 538.

## REGULATION OF VESSELS IN DOMESTIC COMMERCE.

(Shipping Act.)

Sec. 8146a. (Act Sept. 7, 1916, c. 451, Section 1.) Terms defined.

That when used in this Act:

The term “common carrier by water in foreign commerce” means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade: Provided, That a cargo boat commonly called an ocean tramp shall not be deemed such “common carrier by water in foreign commerce.”

The term “common carrier by water in interstate commerce” means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

The term “common carrier by water” means a common carrier by water in foreign commerce or a common carrier by water in interstate

commerce on the high seas or the Great Lakes on regular routes from port to port.

The term "other person subject to this Act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The term "person" includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country. (39 Stat.)

**Sec. 8146aa. (Act Sept. 7, 1916, c. 461, section 2.) Corporation, partnership or association not deemed a citizen; act to apply to receivers and trustees.**

That within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof.

The provisions of this Act shall apply to receivers and trustees of all persons to whom the Act applies, and to the successors or assignees of such person. (39 Stat.)

**Sec. 8146b. (Act Sept. 7, 1916, c. 451, section 3.) United States Shipping Board established; how composed; appointment of commissioners; qualifications; seal of board; rules and regulations.**

That a board is hereby created, to be known as the United States Shipping Board, and hereinafter referred to as the board. The board shall be composed of five commissioners, to be appointed by the President, by and with the advice and consent of the Senate; said board shall annually elect one of its members as chairman and one as vice chairman.

The first commissioners appointed shall continue in office for terms of two, three, four, five, and six years, respectively, from the date of their appointment, the term of each to be designated by the President, but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds.

The commissioners shall be appointed with due regard to their fitness for the efficient discharge of the duties imposed on them by this Act, and to a fair representation of the geographical divisions of the country. Not more than three of the commissioners shall be appointed from the same political party. No commissioner shall be in the employ of or hold any official relation to any common carrier by water or other person subject to this Act, or own any stocks or bonds thereof, or be pecuniarily interested therein. No commissioner shall actively engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the board shall not impair the right of the remaining members of the board to exercise all its powers. The board shall have an official seal, which shall be judicially noticed.



The board may adopt rules and regulations in regard to its procedure and the conduct of its business. (39 Stat.)

**Sec. 8146bb.** (Act Sept. 7, 1916, c. 451, section 4.) **Salary of commissioners; secretary of board; experts, clerks, etc.; duty of military, naval, or other services; civil service rules; expense of board; renting offices; examination of accounts.**

That each member of the board shall receive a salary of \$7,500 per annum. The board shall appoint a secretary, at a salary of \$5,000 per annum, and employ and fix the compensation of such attorneys, officers, naval architects, special experts, examiners, clerks, and other employees as it may find necessary for the proper performance of its duties and as may be appropriated for by the Congress. The President, upon the request of the board, may authorize the detail of officers of the military, naval, or other services of the United States for such duties as the board may deem necessary in connection with its business.

With the exception of the secretary, a clerk to each commissioner, the attorneys, naval architects, and such special experts and examiners as the board may from time to time find necessary to employ for the conduct of its work, all employees of the board shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law.

The expenses of the board, including necessary expenses for transportation, incurred by the members of the board or by its employees under its orders, in making any investigation, or upon official business in any other place than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the board.

Until otherwise provided by law the board may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the board. (39 Stat.)

**Sec. 8146c.** (Act Sept. 7, 1916, c. 451, section 5.) **Construction and equipment; purchase, lease, etc., of vessels for marine trade; limitations respecting purchase, lease or charter of vessels.**

That the board, with the approval of the President, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels: Provided, That neither the board, nor any corporation formed under section eleven in which the United States is then a stockholder shall purchase, lease, or charter any vessel—

(a) Which is then engaged in the foreign or domestic commerce of the United States, unless it is about to be withdrawn from such commerce without any intention on the part of the owner to return it thereto within a reasonable time;

(b) Which is under the registry or flag of a foreign country which is engaged in war;

(c) Which is not adapted, or can not by reasonable alterations and repairs be adapted, to the purposes specified in this section;



(d) Which, upon expert examination made under the direction of the board, a written report of such examination being filed as a public record, is not without alteration or repair found to be at least seventy-five per centum as efficient as at the time it was originally put in commission as a seaworthy vessel. (39 Stat.)

**Sec. 8146cc. (Act Sept. 7, 1916, c. 451, section 6.)** Transfer to board of vessels belonging to War or Navy Departments for Panama Railroad Company.

That the President may transfer either permanently or for limited periods to the board such vessels belonging to the War or Navy Department as are suitable for commercial uses and not required for military or naval use in time of peace, and cause to be transferred to the board vessels owned by the Panama Railroad Company and not required in its business. (39 Stat.)

**Sec. 8146d. (Act Sept. 7, 1916, c. 451, section 7.)** Charter, lease, or sale of vessels to citizens of United States.

That the board, upon terms and conditions prescribed by it and approved by the President, may charter, lease, or sell to any person, a citizen of the United States, any vessel so purchased, constructed, or transferred. (39 Stat.)

**Sec. 8146dd. (Act Sept. 7, 1916, c. 451, section 8.)** Appraisal and sale of vessels becoming unfit for service.

That when any vessel purchased or constructed by or transferred to the board as herein provided, and owned by the United States, becomes, in the opinion of the board, unfit for the purposes of this Act, it shall be appraised and sold at public or private competitive sale after due advertisement free from the conditions and restrictions of the Act. (39 Stat.)

**Sec. 8146e. (Act Sept. 7, 1916, c. 451, section 9.)** Registration, enrollment and licensing of vessels; certain other vessels to engage in coastwise trade; regulations as to vessels purchased, chartered or leased; restrictions as to use or disposition of vessels in time of war or national emergency; misdemeanor.

That any vessel purchased, chartered, or leased from the board may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: Provided, That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned, chartered, or leased by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States. (39 Stat.)

Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. No such vessel, without the approval of the board, shall be transferred to a foreign registry

or flag, or sold; nor, except under regulations prescribed by the board, be chartered or leased.

When the United States is at war, or during any national emergency the existence of which is declared by proclamation of the President, no vessel registered or enrolled and licensed under the laws of the United States shall, without the approval of the board, be sold, leased, or chartered to any person not a citizen of the United States, or transferred to a foreign registry or flag. No vessel registered or enrolled and licensed under the laws of the United States, or owned by any person a citizen of the United States, except one which the board is prohibited from purchasing, shall be sold to any person not a citizen of the United States or transferred to a foreign registry or flag, unless such vessel is first tendered to the board at the price in good faith offered by others, or, if no such offer, at a fair price to be determined in the manner provided in section ten.

Any vessel sold, chartered, leased, transferred, or operated in violation of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000 or to imprisonment of not more than five years, or both such fine and imprisonment. (39 Stat.)

**Sec. 8146e. (Act Sept. 7, 1916, c. 451, section 10.) Taking possession of vessels for naval or military purposes; notice; payment of compensation; appraisement.**

That the President, upon giving to the person interested such reasonable notice in writing as in his judgment the circumstances permit, may take possession, absolutely or temporarily, for any naval or military purpose, of any vessel purchased, leased, or chartered from the board. Provided, That if, in the judgment of the President, an emergency exists requiring such action he may take possession of any vessel without notice.

Thereafter, upon ascertainment by agreement or otherwise, the United States shall pay the person interested the fair actual value based upon normal conditions at the time of taking of the interest of such person in every vessel taken absolutely, or if taken for a limited period, the fair charter value under normal conditions for such period. In case of disagreement as to such fair value it shall be determined by appraisers, one to be appointed by the board, one by the person interested, and a third by the two so appointed. The finding of such appraisers shall be final and binding upon both parties. (39 Stat.)

**Sec. 8146f. (Act Sept. 7, 1916, c. 451, section 11.) Formation of corporations for purchase, construction, equipment, etc., of merchant vessels; United States as stockholder; restricting powers of corporation; public notice; public offer of vessels; operation by corporation of vessels not taken; termination of corporation at close of war; vessels of corporation to revert to board; disposition of same by board; stock in corporation taken over by board.**

That the board, if in its judgment such action is necessary to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States. The total capital stock thereof shall not exceed \$50,000,000. The board may, for and on

behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this Act. The board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein: Provided, That no corporation in which the United States is a stockholder, formed under the authority of this section, shall engage in the operation of any vessel constructed, purchased, leased, chartered, or transferred under the authority of this Act unless the board shall be unable, after a bona fide effort, to contract with any person a citizen of the United States for the purchase, lease, or charter of such vessel under such terms and conditions as may be prescribed by the board.

The board shall give public notice of the fact that vessels are offered and the terms and conditions upon which a contract will be made, and shall invite competitive offerings. In the event the board shall, after full compliance with the terms of this proviso, determine that it is unable to enter into a contract with such private parties for the purchase, lease, or charter of such vessel, it shall make a full report to the President, who shall examine such report, and if he shall approve the same he shall make an order declaring that the conditions have been found to exist which justify the operation of each vessel by a corporation formed under the provisions of this section.

At the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved. The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the board. The board may sell, lease, or charter such vessels as provided in section seven and shall dispose of the property other than vessels of the best available terms and, after payment of all debts and obligations, deposit the proceeds thereof in the Treasury to its credit. All stock in such corporations owned by others than the United States at the time of dissolution shall be taken over by the board at a fair and reasonable value and paid for with funds to the credit of the board. In case of disagreement, such value shall be determined in the manner provided in section ten. (39 Stat.)

**Sec. 8146ff. (Act Sept. 7, 1916, c. 451, section 12.) Investigations as to cost of merchant vessels; recommendations to Congress.**

That the board shall investigate the relative cost of building merchant vessels in the United States and in foreign maritime countries, and the relative cost, advantages, and disadvantages of operating in the foreign trade vessels under United States registry and under foreign registry. It shall examine the rules under which vessels are constructed abroad and in the United States, and the methods of classifying and rating same, and it shall examine into the subject of marine insurance, the number of companies in the United States, domestic and foreign, engaging in marine insurance, the extent of the insurance on hulls and cargoes placed or written in the United States, and the extent of reinsurance of American maritime risks in foreign companies, and ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of an

American merchant marine. It shall examine the navigation laws of the United States and the rules and regulations thereunder, and make such recommendations to the Congress as it deems proper for the amendment, improvement, and revision of such laws, and for the development of the American merchant marine. It shall investigate the legal status of mortgage loans on vessel property, with a view to means of improving the security of such loans and of encouraging investment in American shipping.

It shall, on or before the first day of December in each year, make a report to the Congress, which shall include its recommendations and the results of its investigations, a summary of its transactions and a statement of all expenditures and receipts under this Act, and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the board. (39 Stat.)

**Sec. 8146g. (Act Sept. 7, 1916, c. 451, section 13.) Appropriations; issuance of bonds; payment of proceeds into Treasury.**

That for the purpose of carrying out the provisions of sections five and eleven no liability shall be incurred exceeding a total of \$50,000,000 and the Secretary of the Treasury, upon the request of the board, approved by the President, shall from time to time issue and sell or use any of the bonds of the United States now available in the Treasury under the Acts of August fifth, nineteen hundred and nine, February fourth, nineteen hundred and ten, and March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed \$50,000,000: Provided, That any bonds issued and sold or used under the provisions of this section may be made payable at such time within fifty years after issue as the Secretary of the Treasury may fix, instead of fifty years after the date of issue, as prescribed in the Act of August fifth, nineteen hundred and nine.

The proceeds of such bonds and the net proceeds of all sales, charters, and leases of vessels and of sales of stock made by the board, and all other moneys received by it from any source, shall be covered into the Treasury to the credit of the board, and are hereby permanently appropriated for the purpose of carrying out the provisions of sections five and eleven. (39 Stat.)

**Sec. 8146gg. (Act Sept. 7, 1916, c. 451, section 14.) Common carriers by water prohibited from giving deferred rebates; from using a "Fighting ship;" from retaliatory discrimination; from discriminatory contracts; penalty for violation.**

That no common carrier by water shall directly or indirectly—

First. Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow, a deferred rebate to any shipper. The term "deferred rebate" in this Act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with terms of the rebate agreement or arrangement.



Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term "fighting ship" in this Act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$25,000 for each offense. (39 Stat.)

**Sec. 8146h. (Act Sept. 7, 1916, c. 451, section 15.) Contracts between carriers to be filed with Shipping Board; disapproval of contracts by board; preexisting contracts; exception of agreements from Act July 2, 1890, and its amendments; penalty for violation of provisions.**

That every common carrier by water, or other person subject to this Act, shall file immediately with the board a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The board may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors or to operate to the detriment of the commerce of the United States, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations.

Agreements existing at the time of the organization of the board shall be lawful until disapproved by the board. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the board.

All agreements, modifications, or cancellations made after the organization of the board shall be lawful only when and as long as



approved by the board, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and amendments and Acts supplementary thereto, and the provisions of sections seventy-three to seventy-seven, both inclusive, of the Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," and amendments and Acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of \$1,000 for each day such violation continues, to be recovered by the United States in a civil action. (39 Stat.)

**Sec. 8146hh. (Act Sept. 7, 1916, c. 451, section 16.) Discriminatory acts prohibited.**

That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Second. To allow any person to obtain transportation for property at less than the regular rates then established and enforced on the line of such carrier, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

Third. To induce, persuade, or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favorable a rate of insurance on vessel or cargo, having due regard to the class of vessel or cargo, as is granted to such carrier or other person subject to this Act. (39 Stat.)

**Sec. 8146i. (Act Sept. 7, 1916, c. 451, section 17.) Collection; discriminatory rates prohibited; collection by Shipping Board; supervision by board of regulations of carrier.**

That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the board finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

Every such carrier and every other person subject to this Act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling,

storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice. (39 Stat.)

**Sec. 8146ii.** (Act Sept. 7, 1916, c. 451, sections 18, 19.) Common carriers to establish schedule of rates and reasonable regulations for conduct of business; filing with Shipping Board; charge of more than maximum rates; rates reduced to prevent competition not to be increased without approval of board.

That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing or delivering of property.

Every such carrier shall file with the board and keep open to public inspection, in the form and manner and within the time prescribed by the board, the maximum rates, fares, and charges for or in connection with transportation between points on its own route; and if a through route has been established, the maximum rates, fares, and charges for or in connection with transportation between points on its own route and points on the route of any other carrier by water.

No such carrier shall demand, charge, or collect a greater compensation for such transportation than the rates, fares, and charges filed in compliance with this section, except with the approval of the board and after ten days' public notice in the form and manner prescribed by the board, stating the increase proposed to be made; but the board for good cause shown may waive such notice.

Whenever the board finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice.

Whenever a common carrier by water in interstate commerce reduces its rates on the carriage of any species of freight to or from competitive points below a fair and remunerative basis with the extent of driving out or otherwise injuring a competitive carrier by water, it shall not increase such rates unless after hearing the board finds that such proposed increase rests upon changed conditions other than the elimination of said competition. (39 Stat.)

**Sec. 8146j.** (Act Sept. 7, 1916, c. 451, section 20.) Acquiring of information prejudicial to shipper prohibited; exception in case of legal process.

That it shall be unlawful for any common carrier by water or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information knowingly

to disclose to or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this Act for transportation in interstate or foreign commerce, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

Nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States, or of any State, Territory, District, or possession thereof, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime, or to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers. (39 Stat.)

**Sec. 8146jj. (Act Sept. 7, 1916, c. 451, section 21.) Shipping Board may require reports from carriers; penalty for failure to report; penalty for giving false report.**

That the board may require any common carrier by water, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report, or any account, record, rate or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this Act. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the board so requires, and shall be furnished in the form and within the time prescribed by the board. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section shall forfeit to the United States the sum of \$100 for each day of such default.

Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than \$1,000, or imprisonment for not more than one year, or to both such fine and imprisonment. (39 Stat.)

**Sec. 8146k. (Act Sept. 7, 1916, c. 451, section 22.) Complaints to board of acts of common carrier by water; investigation and hearing; investigations at expense of board.**

That any person may file with the board a sworn complaint setting forth any violation of this Act by a common carrier by water, or other person subject to this Act, and asking reparation for the injury, if any, caused thereby. The board shall furnish a copy of the complaint to such carrier or other person, who shall, within a reasonable time specified by the board, satisfy the complaint or answer it in writing. If the complaint is not satisfied the board shall, except as otherwise provided in this Act, investigate it in such manner and by

such means, and make such order as it deems proper. The board, if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

The board, upon its own motion, may in like manner and, except as to orders for the payment of money, with the same powers, investigate any violation of this Act. (39 Stat.)

**Sec. 8146kk. (Act Sept. 7, 1916, c. 451, section 23.) Orders to be made only for full hearing; how long orders to continue in force.**

Orders of the board relating to any violation of this Act shall be made only after full hearing, and upon a sworn complaint or in proceedings instituted of its own motion.

All orders of the board other than for the payment of money made under this Act shall continue in force for such time, not exceeding two years, as shall be prescribed therein by the board, unless suspended, modified, or set aside by the board or any court of competent jurisdiction. (39 Stat.)

**Sec. 8146l. (Act Sept. 7, 1916, c. 451, section 24.) Records of board; copies; publication of reports; evidence.**

That the board shall enter of record a written report of every investigation made under this Act in which a hearing has been held, stating its conclusions, decision, and order, and, if reparation is awarded, the findings of fact on which the award is made, and shall furnish a copy of such report to all parties to the investigation.

The board may publish such reports in the form best adapted for public information and use, and such authorized publications shall, without further proof or authentication, be competent evidence of such reports in all courts of the United States and of the States, Territories, Districts, and possessions thereof. (39 Stat.)

**Sec. 8146ll. (Act Sept. 7, 1916, c. 451, section 25.) Reversal, suspension or modification of orders; rehearings.**

That the board may reverse, suspend, or modify, upon such notice and in such manner as it deems proper, any order made by it. Upon application of any party to a decision or order it may grant a rehearing of the same or any matter determined therein, but no such application for allowance of a rehearing shall, except by special order of the board, operate as a stay of such order. (39 Stat.)

**Sec. 8146m. (Act Sept. 7, 1916, c. 451, section 26.) Investigation by board as to acts of foreign governments in respect to foreign trade; report to President; submission by President to Congress.**

The board shall have power, and it shall be its duty whenever complaint shall be made to it, to investigate the action of any foreign Government with respect to the privileges afforded and burdens imposed upon vessels of the United States engaged in foreign trade whenever it shall appear that the laws, regulations, or practices of any foreign Government operate in such a manner that vessels of the United States are not accorded equal privileges in foreign trade with vessels of such foreign countries or vessels of other foreign countries, either in trade to or from the ports of such foreign country or in respect of the passage or transportation through such foreign country of passengers or goods intended for shipment or transportation in such vessels of the United States, either to or from ports of



such foreign country or to or from ports of other foreign countries. It shall be the duty of the board to report the results of its investigation to the President with its recommendations and the President is hereby authorized and empowered to secure by diplomatic action equal privileges for vessels of the United States engaged in such foreign trade. And if by such diplomatic action the President shall be unable to secure such equal privileges then the President shall advise Congress as to the facts and his conclusions by special message, if deemed important in the public interest, in order that proper action may be taken thereon. (39 Stat.)

**Sec. 8146mm.** (Act Sept. 7, 1916, c. 451, section 27.) Board may compel attendance of witnesses and production of books, papers, etc.; subpoenas; fees and mileage; compelling obedience to subpoenas.

That for the purpose of investigating alleged violations of this Act, the board may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence from any place in the United States at any designated place of hearing. Subpoenas may be signed by any commissioner, and oaths or affirmations may be administered, witnesses examined, and evidence received by any commissioner or examiner, or, under the direction of the board, by any person authorized under the laws of the United States or of any State, Territory, District, or possession thereof to administer oaths. Persons so acting under the direction of the board and witnesses shall, unless employees of the board, be entitled to the same fees and mileage as in the courts of the United States. Obedience to any such subpoena shall, on application by the board, be enforced as are orders of the board other than for the payment of money. (39 Stat.)

**Sec. 8146n.** (Act Sept. 7, 1916, c. 451, section 28.) Immunity of witnesses giving incriminating testimony.

That no person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpoena of the board or of any court in any proceeding based upon or growing out of any alleged violation of this Act; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying. (39 Stat.)

**Sec. 8146nn.** (Act Sept. 7, 1916, c. 451, section 29.) Enforcement of orders of board.

That in case of violation of any order of the board, other than an order for the payment of money, the board, or any party injured by such violation, or the Attorney-General, may apply to a district court having jurisdiction of the parties; and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce obedience thereto by a writ of injunction or other proper process, mandatory or otherwise. (39 Stat.)



**Sec. 8146o. (Act Sept. 7, 1916, c. 451, section 30.)** Violation of orders of board for payment of money; remedy in a proceeding of District Court; findings of board as *prima facie* evidence; costs and attorneys' fees; parties to process; judgment; limitation.

That in case of violation of any order of the board for payment of money the person to whom such award was made may file in the district court for the district in which such person resides, or in which is located any office of the carrier or other person to whom the order was directed, or in which is located any point of call on a regular route operated by the carrier, or in any court of general jurisdiction of a State, Territory, District, or possession of the United States having jurisdiction of the parties, a petition or suit setting forth briefly the causes for which he claims damages and the order of the board in the premises.

In the district court the findings and order of the board shall be *prima facie* evidence of the facts therein stated, and the petitioner shall not be liable for costs, nor shall he be liable for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If a petitioner in a district court finally prevails, he shall be allowed a reasonable attorney's fees, to be taxed and collected as part of the costs of the suit.

All parties in whose favor the board has made an award of reparation by a single order may be joined as plaintiffs, and all other parties to such order may be joined as defendants, in a single suit in any district in which any one such plaintiff could maintain a suit against any one such defendant. Service of process against any such defendant not found in that district may be made in any district in which is located any office of, or point of call on a regular route operated by, such defendant. Judgment may be entered in favor of any plaintiff against the defendant liable to that plaintiff.

No petition or suit for the enforcement of an order for the payment of money shall be maintained unless filed within one year from date of the order (39 Stat.)

**Sec. 8146oo. (Act Sept. 7, 1916, c. 451, section 31.)** Venue and procedure same as in suits growing out of orders of Interstate Commerce Commission.

That the venue and procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the board shall, except as herein otherwise provided, be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district court having jurisdiction of the parties. (39 Stat.)

**Sec. 8146p. (Act Sept. 7, 1916, c. 451, section 32.)** Penalty for violation of Act.

That whoever violates any provision of this Act, except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by fine of not to exceed \$5,000. (39 Stat.)

**Sec. 8146pp. Act Sept. 7, 1916, c. 451, section 33.)** Act not to affect powers of Interstate Commerce Commission; intrastate commerce.

That this Act shall not be construed to affect the power or jurisdiction of the Interstate Commerce Commission, nor to confer upon the board concurrent power or jurisdiction over any matter within

the power or jurisdiction of such commission; nor shall this Act be construed to apply to intrastate commerce. (39 Stat.)

**Sec. 8146q.** (Act Sept. 7, 1916, c. 451, section 34.) **Partial invalidity of Act.**

That if any provision of this Act, or the application of such provision to certain circumstances, is held unconstitutional, the remainder of the Act, and the application of such provision to circumstances other than those as to which it is held unconstitutional, shall not be affected thereby. (39 Stat.)

**Sec. 8146r.** Act Sept. 7, 1916, c. 451, section 36.) **Refusal of clearance of vessel refusing to accept trade.**

The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise destined for a foreign or domestic port whenever he shall have satisfactory reason to believe that the master, owner, or other officer of such vessel or other vehicle refuses or declines to accept or receive freight or cargo in good condition tendered for such port of destination or for some intermediate port of call, together with the proper freight or transportation charges therefor, by any citizen of the United States, unless the same is fully laden and has no space accommodations for the freight or cargo so tendered, due regard being had for the proper loading of such vessel or vehicle, or unless such freight or cargo consists of merchandise for which such vessel or vehicle is not adaptable. (39 U. S. Stats. at Large—.)

## RULES OF PRACTICE BEFORE THE COMMISSION IN PROCEEDINGS UNDER THE ACT TO REGULATE COMMERCE.

### I.

#### Public Sessions.

Sessions of the Commission for hearing evidence or oral arguments will be held as ordered by the Commission.

The office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4:30 p. m.

### II.

#### Parties

Any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, or the railroad commissioner or commission of any State or Territory, may complain to the Commission of anything done, or omitted to be done, in violation of the provisions of the Act to regulate commerce, as amended, by any common carrier subject to the provisions of said Act. Any such party may appear and be heard in person or by attorney.

Two or more complainants may join in one complaint against two or more defendants, if the complaint involves substantially the same principle, subject, or state of facts.

If a complaint relates to matters in which two or more carriers, engaged in transportation by continuous carriage or shipment, are

interested, the several carriers participating in such carriage or shipment are necessary parties defendant.

If a complaint relates to rates, regulations, or practices of carriers operating different lines, and the object of the proceeding is to secure correction of such rates, regulations, or practices on each of said lines, all the carriers operating such lines should be made defendants.

If a complaint relates to provisions of a classification it will ordinarily be sufficient to name as defendants the carriers forming one or more through routes between representative points of origin and destination.

If the line of a carrier is operated by a receiver or trustee, both the carrier and its receiver or trustee must be made defendants in cases involving transportation over such line.

Any person may file an intervening petition in any proceeding prior to or at the time the case is called for hearing, but not after except for good cause shown. Such petition shall set forth the grounds of the proposed intervention and the petitioner's interest in the proceedings. Intervention will not be permitted except upon allegations that are reasonably pertinent to the issues already presented. Leave granted on such petition will entitle interveners to have notice of hearings, to produce and cross-examine witnesses, and to be heard in person or by attorney upon brief and at the oral argument. The petition need not be verified, but must be signed in ink by petitioner or his duly authorized attorney. The petitioner must furnish as many complete copies thereof as there are parties to the case, and three additional copies for the use of the Commission.

### III.

#### Complaints.

Complaints must be typewritten on one side of the paper only, or be printed. In either case the complaint must conform to the specifications of Rule XXI. The names of all parties, complainant or defendant, must be stated in full, without abbreviations, and the address of each complainant, with the name and address of his attorney, if any, must appear upon each copy. The complaint need not be verified, but must be signed in ink by the complainant or his duly authorized attorney. The complainant must furnish as many complete copies of the complaint as there may be parties defendant to be served, including receivers or trustees, and three additional copies for the use of the Commission.

The Commission will serve the complaint upon each defendant by leaving a copy with its designated agent in the District of Columbia, or, if no such agent has been designated, by posting a copy in the office of the secretary of the Commission.

Complaints should be so drawn as fully and completely to advise the defendant and the Commission wherein the provisions of the Act have been violated and should set forth briefly and in plain language the facts claimed to constitute such violation. Two or more grounds of complaint involving the same principle, subject, or state of facts, may be included in one complaint, but should be separately stated and numbered. The several rates, regulations, and discriminations complained of should be set out by specific reference to the tariffs in which they appear whenever that is practicable.

Where the rate attacked is one increased after January 1, 1910, the complaint should so state.

In case discrimination in violation of sections 3 or 4 of the Act is alleged the complaint should specify and describe in detail the particular preference or advantage to any person, company, firm, corporation, locality, or traffic, which is relied upon as constituting such discrimination. Appropriate allegation should also be made in such case to present for decision the issue as to whether or not such rates, charges, or other matters complained of are just and reasonable. In case a violation of section 4 is alleged the complaint should specify and describe in detail the particular violation of that section, giving tariff references whenever practicable.

In case the discrimination alleged is between intrastate and interstate or foreign traffic the complaint should so state with sufficient definiteness fully to disclose the allegation made in respect to any tariff provision prescribed, established, or compelled by state authority. The Commission desires in such cases to notify the state authorities of the complaint, and complainant must furnish sufficient copies for that purpose.

Except under unusual circumstances and for good cause shown, reparation will not be awarded unless specifically prayed for in the complaint or in an amendment thereto filed before the submission of the case.

After a final order has been entered upon a complaint in which reparation is not sought or, if prayed, has been denied, the Commission will not ordinarily award reparation upon a complaint subsequently filed and based upon any finding upon the first complaint.

Where reparation is sought the complaint should state (a) that complainant makes claim for reparation, (b) the name of each individual claimant asking reparation, (c) the commodities transported, (d) the names of defendants against which claim is made, (e) the period of time within which or the specific date upon which the shipments were made, and (f) the points of origin and destination, either specifically, or, where they are numerous, by a definite indication of a defined territorial or rate group of the points of origin and destination. Under a general rate adjustment challenged in the complaint, or upon many shipments under a particular rate, or where many points of origin or destination are involved, it is the practice of the Commission first to find and determine in its report as to the reasonableness of the rate or rates in issue, and whether the parties seeking reparation paid and bore the charges and are entitled to reparation, thereafter giving such parties an opportunity to make proof respecting the shipments upon which reparation is claimed. In such cases freight bills and other exhibits bearing on the amount of reparation should be reserved until called for and should not be filed with the complaint. The parties, however, should be prepared to produce at the hearing the freight bills and other exhibits bearing on the amount of reparation, for the reason that they may become necessary in developing other facts in the case.

When a claim for reparation has been before the Commission informally and the parties have been notified by the Commission that the claim is of such a nature that it can not be determined informally, or when the parties voluntarily withdraw the claim from informal consideration, or when a claim has been filed with the Commission merely to stop the running of the statute of limitations,



formal complaint thereon must be filed within six months from the date of such notification, withdrawal, or filing. Otherwise the parties will be deemed to have abandoned their claim and the complaint will not be entertained: **Provided, however,** That this rule does not apply to formal complaints for reparation filed within two years from the date of the delivery of the shipments.

#### IV.

##### **Answers.**

Answers must be typewritten on one side of the paper only, or be printed. In either case the answer must conform to the specifications of Rule XXI.

One copy of each answer must, unless the Commission orders otherwise, be filed with the secretary of the Commission at his office in Washington, D. C., within 30 days after the day of service of the complaint by defendants whose general offices are at or west of El Paso, Tex., Salt Lake City, Utah, or Spokane, Wash., and within 20 days by all other defendants, and a copy of each such answer must be at the same time served personally or by mail upon the complainant or his attorney. The Commission will, when advisable, shorten or extend the time for answer.

Answers should be so drawn as fully and completely to advise the complainant and the Commission of the nature of the defense, and should admit or deny specifically and in detail each material allegation of the complaint. Whenever it is apparent from the complaint, either by direct allegation or otherwise, that a departure from the requirements of the fourth section of the Act is involved, the answer should set forth by number the particular application or order which protects such departure. An answer denying that a discrimination is undue or unjust should explain fully wherein such discrimination is not undue or unjust. It is desired that every effort be thus made to narrow the issues upon hearing.

If a defendant satisfies a complaint either before or after answering, a signed acknowledgment thereof must be filed by both parties, stating when and how the complaint has been satisfied.

#### V.

##### **Formal Claims for Reparation Based Upon Findings of the Commission.**

When the Commission finds that reparation is due, but that the amount can not be ascertained upon the record before it, the complainant should immediately prepare a statement in accordance with Form 5, showing as to each shipment upon which reparation is claimed the date of delivery, car initials and number, points of origin and destination, route, commodity, weight, rate applied, charges collected, rate found reasonable and charges applicable thereunder, and the amount of reparation payable upon the basis of the findings.

Such statements should not include any shipments which were transported upon rates other than those included in the Commission's findings nor any shipments which were delivered at destination more than two years before the complaint was informally or formally presented to the Commission. The statement should then be forwarded to the carrier which collected the charges for certification as to its accuracy. Such certification should cover not only the movement of



the shipments and the amount of charges but also the amount of reparation claimed under the Commission's findings. Discrepancies, duplications, or other errors in such statements should be adjusted by the parties and an agreed statement submitted to the Commission in accordance with Form 5.

## VI.

### Service of Papers.

Notices and copies of papers, other than complaints, depositions, and intervening petitions, must be served upon all parties personally or by mail. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.

## VII.

### Amendments.

Amendments to any complaint or answer in any proceeding will be allowed or refused by the Commission at its discretion.

## VIII.

### Continuances and Extensions of Time.

Continuances and extensions of time will be granted or denied by the Commission at its discretion.

## IX.

### Stipulations.

Parties to any proceeding may, by stipulation in writing filed with the secretary, or presented at the hearing, agree upon the facts, or any portion thereof, involved therein. It is desired that the facts be thus agreed upon as far as and whenever practicable.

## X.

### Hearings.

When issue is joined upon formal complaint by service of answer, or by failure of defendant to answer, the Commission will assign a time and place for hearing. Witnesses will be examined orally before the Commission or one of its examiners, unless their testimony be taken by deposition or the facts be agreed upon as provided for in these rules.

At hearings on formal complaint the complainant shall open and close. At hearings upon applications for relief from any provision of the Act the applicant shall open and close. At hearings of investigation and suspension proceedings the respondent shall open and close. At hearings of all other investigations, on the motion of the Commission, the Commission shall open and close, except that upon proper notice in advance of the hearing the Commission may prescribe a different order. In hearings of several proceedings upon a consolidated record the presiding commissioner or examiner shall designate who shall open and close. Interveners shall follow the party in whose behalf the intervention is made, and in all cases where the intervention is not in support of either original party the presiding commissioner or examiner shall designate the order of procedure for such interveners.

## XI.

**Depositions.**

The deposition of a witness for use in a proceeding pending before the Commission may, after issue joined, be taken in compliance with the following rules of procedure, prescribed under section 17 of the Act, but not otherwise.

Such depositions may be taken before a special agent or examiner of the Commission, or any judge or commissioner of any court of the United States, or any clerk of a district court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States, or any notary public not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation, according to such designation as the Commission may make in any order made by it in the premises, except that where such deposition is taken in a foreign country it may be taken before an officer or person designated by the Commission or agreed upon by the parties by stipulation in writing to be filed with the Commission.

Any party desiring to take the deposition of a witness in such a proceeding shall notify the Commission to that effect, and in such notice shall state the time when, the place where, and the name and post-office address of the party before whom it is desired that the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify, whereupon the Commission will make and serve upon the parties or their attorneys an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the party before whom the witness is to testify, but such time and place, and the party before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said notice to the Commission.

Every person whose deposition is so taken shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth and nothing but the truth concerning the matter about which he shall testify, and shall be carefully examined. His testimony shall be reduced to typewriting by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so subscribed and certified it shall, together with two copies thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D. C. Upon receipt of the deposition and copies the Commission will file in the record in said proceeding such deposition and forward one copy to the complainant or his attorney, and the other copy to the defendant or its attorney, except that where there are more than one complainant or defendant the copies will be forwarded by the Commission to the parties designated by such complainants or defendants as the case may be.

Such depositions must be typewritten and must conform to the specifications of Rule XXI.

No deposition shall be taken except after 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

No such deposition shall be taken either before the proceeding is at issue or, unless under special circumstance and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing.

Witnesses whose depositions are taken pursuant to these rules and the magistrate or the officer taking the same, unless he be an examiner of the Commission, shall severally be entitled to the same fees as are paid for like service in the courts of the United States, which fees shall be paid by the party or parties at whose instance the depositions are taken.

## XII.

### Witnesses and Subpoenas.

Subpoenas requiring the attendance of witnesses from any place in the United States to any designated place of hearing may be issued by any member of the Commission.

Subpoenas for the production of books, papers, or documents (unless directed to issue by the Commission upon its own motion) will issue only upon application in writing. Applications to compel witnesses who are not parties to the proceedings, or agents of such parties, to produce documentary evidence must be verified and must specify, as nearly as may be, the books, papers, or documents desired and the facts to be proven by them. Applications to compel a party to the proceeding to produce books, papers, or documents need only set forth in a general way the books, papers, or documents sought, with a statement that the applicant believes they will be of service in the determination of the proceeding.

Witnesses whose testimony is taken orally are entitled to the same fees as are paid for like services in the courts of the United States, such fees to be paid by the party at whose instance the testimony is taken.

## XIII.

### Documentary Evidence.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be received, but the party offering the same shall present to opposing counsel and to the Commission true copies of such material and relevant matter, in proper form, which may be received in evidence and become part of the record.

In case any portion of a tariff, report, circular, or other document on file with the Commission is offered in evidence, the party offering the same must give specific reference to the items or pages and lines thereof to be considered. The Commission will take notice of items in tariffs and annual or other periodical reports of carriers properly on file with it or in annual, statistical, and other official reports of the Commission. When it is desired to direct the Commission's attention to such tariffs or reports upon hearing or in briefs or argument it must be done with the precision specified in the second preceding sentence. In case any testimony in other

proceedings than the one on hearing is introduced in evidence, a copy of such testimony must be presented as an exhibit. When exhibits of a documentary character are to be offered in evidence, copies should be furnished opposing counsel for use at the hearing.

All exhibits showing rates or distances must, by proper I. C. C. number reference, indicate the tariff authority for the rates, and must also show by lines and junction points the route via which the distances are computed, as well as the authority for the distance scale used.

Whenever evidence can be condensed in tables, that method of presentation should be adopted.

Where agreed upon by the parties at or after the hearing, the presiding commissioner or examiner, if he deems advisable, may permit the filing of specified documentary evidence as a part of the record within a time to be fixed by him, but which shall expire not less than 10 days before the date fixed for filing and serving the opening brief. Documentary evidence will not be received after the close of testimony except as above provided.

#### XIV.

##### Briefs.

Unless otherwise specifically ordered, briefs may be filed upon application made at hearings or upon order of the Commission. Briefs must be printed in conformity with the specifications of Rule XXI, and contain an abstract of the evidence, assembled by subjects, with reference to the pages of the record whereon the evidence appears. There should be included requests for specific findings which the parties think the Commission should make.

Documentary exhibits should not be reproduced in briefs, but may, if it is desired, be reproduced in an appendix to the brief. Analyses of such exhibits should be included in the abstract of evidence under the subjects to which they pertain. In cases involving a discrimination in rates against one community or locality and in favor of another community or locality, or otherwise involving a relationship of rates, and in investigation and suspension cases, the party who is required to file the first brief shall insert therein, opposite the statement of the case, a small map or chart of the territory showing the rate structure involved. The abstract of evidence should follow the statement of the case and precede the argument. Every brief of more than 20 pages shall contain on its front flyleaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to alphabetically arranged, together with references to pages where the cases are cited.

Briefs for the various parties shall be filed in the same order as governs in the taking of their testimony at hearings. At the close of the testimony in each case the presiding commissioner or examiner will fix the time for filing and service of the respective briefs as follows, unless good cause for variation therefrom is shown: For the opening brief, 30 days from close of testimony; for the brief of the opposing party, 15 days after the date fixed for the opening brief; for reply brief, 10 days after the date fixed for the brief of the opposing party. Briefs of interveners shall be filed and served within the time fixed for the brief of the party in whose behalf the intervention is made, or within such other time as may be fixed by the presiding commissioner or examiner. Briefs not filed with the Com-



mission and served so as to reach opposing counsel on or before the dates fixed therefor will not be received except by special permission of the Commission. Parties who fail to file opening brief, as required by this rule, will not be permitted to file reply to brief of opposing party. All briefs must be filed with the secretary and be accompanied by notice, showing service upon all opposing counsel who appeared at the hearing or on brief, and 15 copies of each brief shall be furnished for the use of the Commission, unless otherwise ordered. Applications for extension of time in which to file briefs shall be by petition, in writing, stating the facts on which the application rests, which must be filed with the Commission at least five days before the time for filing such brief.

#### Oral Argument.

Oral argument will be had only as ordered by the Commission. Applications therefor must be made at the hearing or in writing within 10 days after the close of testimony.

#### XV.

##### Rehearings.

Applications for reopening a proceeding after final submission, or for rehearing after decision, must be by petition stating specifically the grounds relied upon, and copies thereof must be served by the party filing the same upon all opposing counsel who appeared at the hearing or on brief. Application for rehearing that part of any case relating to reparation or other damage for past injuries must be filed with the Commission within 60 days after service of the order therein.

If such application be to reopen the proceeding for further evidence, the nature and purpose of such evidence must be briefly stated, and the same must not be merely cumulative. If the application be for a rehearing, the petition must specify the matters claimed to be erroneously decided, with a brief statement of the alleged errors. If any order of the Commission is sought to be reversed, changed, or modified on account of facts and circumstances arising subsequent to the hearing, or of consequences resulting from compliance therewith, the matters relied upon by the applicant must be fully set forth. At least 10 copies of all such applications must be filed with the Commission and be accompanied by notice showing service upon all opposing counsel. Such adverse parties may file a reply to such petition for rehearing or reopening within 10 days from the date of service upon them. Such reply must be served upon the attorney for petitioner and 10 copies must be filed with the Commission.

#### XVI.

##### Transcripts of Testimony.

One copy of the testimony will be furnished by the Commission for the use of the complainant and one copy for the use of the defendant, without charge. If two or more complainants or defendants have appeared at the hearing, such complainants or defendants must designate to whom the copy for their use shall be delivered.

In proceedings instituted by the Commission on its own motion, including proceedings involving the suspension of tariffs, no copies of testimony will be furnished without charge.



## XVII.

**Compliance With Orders.**

When an order has been issued, the defendant or defendants named therein must promptly notify the secretary of the Commission on or before the date upon which such order becomes effective, whether or not compliance has been made therewith. If a change in rates is required, the notification to the secretary must be given in addition to the filing of proper tariffs.

## XVIII.

**Applications Under Fourth Section.**

Any common carrier subject to the Act to regulate commerce, as amended, may apply to the Commission, under the proviso clause of the fourth section, for such authorization as it is empowered to grant thereunder. Such application must be verified and conform to Rule XXI. The application should specify the places and traffic involved, the rates, fares, or charges on such traffic for the shorter and longer distances, the carriers other than the applicant which may be interested in the traffic, the special nature of the case, the character of the hardship claimed to exist, and the extent of the relief sought by the applicant. Upon the filing of such application the Commission will take such action as the circumstances of the case require.

## XIX

**Suspensions.**

Suspensions of tariff schedules under section 15 of the Act will not ordinarily be considered unless application therefor is made in writing at least 10 days before the time fixed in the tariff for such rates to take effect. Applications for suspensions must indicate the schedule affected by its I. C. C. number and give specific reference to the items against which protest is made, together with a statement of the grounds thereof. When application for the suspension of tariff schedules is made, seven copies of such application should be furnished.

## XX.

**Information to Parties.**

The secretary of the Commission will, upon request, advise any party as to the form of complaint, answer, or other paper necessary to be filed in any proceeding.

## XXI.

**Specifications of Complaints, Answers, Briefs, Petitions, Applications, Etc.**

All complaints, answers, petitions, applications, depositions, or other papers to be filed, if typewritten, must be on paper not more than 8½ inches wide and not more than 12 inches long, and weighing not less than 16 pounds to the ream, folio base 17 by 22 inches, with left-hand margin not less than 1½ inches wide. The impression must be on only one side of the paper.

Whenever such papers are printed they, as well as briefs, must be in 10 or 12 point type, on good unglazed paper, 5⅞ inches wide by 9 inches long, with inside margin not less than 1 inch wide, and with double-ledged text and single-ledged citations.

## XXII.

## Address of the Commission.

All communications to the Commission must be addressed to Washington, D. C., unless otherwise specifically directed.

## APPROVED FORMS.

These forms may be used in cases to which they are applicable, with such alterations as the circumstances may render necessary.

## No. 1.

## Complaint.

## BEFORE THE INTERSTATE COMMERCE COMMISSION.

_____	_____	}	[Insert corporate title, without abbreviation, of carrier, or carriers, necessary defendants.]
THE _____	vs. RAILROAD COMPANY,		
_____	RAILWAY COMPANY.		

The complaint of the above-named complainant, respectfully shows:

I. That [complainant should here state nature and place of business, also whether a corporation, firm, or partnership, and if a firm or partnership, the individual names of the parties composing the same.]

II. That the defendant above named is a [are] common carrier engaged in the transportation of passengers and property, wholly by railroad [or, partly by railroad and partly by water], between points in the state of \_\_\_\_\_ and points in the state of \_\_\_\_\_, and as such common carrier is [are] subject to the provisions of the Act to regulate commerce, approved February 4, 1887, and Acts amendatory thereof or supplementary thereto.

III. That [state in this and subsequent paragraphs, to be numbered IV, V, etc., the matter or matters intended to be complained of, naming every rate, rule, regulation, or practice the lawfulness of which is challenged, and also each point of origin and point of destination between which the rates complained of are applied. Whenever practicable tariff references should be given.]

[Where discrimination is charged, the facts constituting the basis of the charge should be clearly stated; that is, if the discrimination be under section 2, the person or persons claimed to be favored and the person or persons claimed to be injured should be named, and the kind of service and kind of traffic, together with the claimed similarity of circumstances and conditions of transportation, should be set forth. If the discrimination be under section 3, the particular person, company, firm, corporation, locality, or traffic claimed to be accorded undue or unreasonable preference or advantage, or subjected to undue or unreasonable prejudice or disadvantage, should be stated. If the discrimination be under section 4, the particular provision of the section claimed to be violated—that is, whether the long-and-short-haul provision or the aggregate of intermediate rates provision—as well as the facts constituting such violation should be stated.]

X. That by reason of the facts stated in the foregoing paragraphs complainant has [have] been subjected to the payment of rates

[fares or charges] for transportation which were when exacted, and still are, (1) unjust and unreasonable in violation of section 1 of the Act to regulate commerce, and [or] (2) unjustly discriminatory in violation of section 2, and [or] (3) unduly preferential or prejudicial in violation of section 3, and [or] (4) in violation of the long-and-short-haul [or, aggregate of intermediate rates] provision of section 4 thereof. [Use one or more of the allegations numbered 1, 2, 3, 4, according to the facts as intended to be charged.]

Wherefore complainant prays that defendant may be [severally] required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants [and each of them] to cease and desist from the aforesaid violations of said Act to regulate commerce, and establish and put in force and apply in future to the transportation of ——— between the origin and destination points named in paragraph ——— hereof, in lieu of the rates [rules, regulations, or practices] named in said paragraph, such other maximum rates [rules, regulations, or practices] as the Commission may deem reasonable and just [and also pay to complainant by way of reparation for the unlawful charges hereinbefore alleged the sum of ———, or such other sum as, in view of the evidence to be adduced herein, the Commission shall determine that complainant is [are] entitled to as an award of damages under the provisions of said Act for violation thereof], and that such other and further order or orders be made as the Commission may consider proper in the premises.

Dated at ———, 19—.

\_\_\_\_\_  
[Complainant's signature.]

No. 2.

Answer.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

\_\_\_\_\_  
vs.  
THE ——— RAILROAD COMPANY, } Docket No. ———.

The above-named defendant, for answer to the complaint in this proceeding, respectfully state :

I. [Here follow appropriate and responsive admissions, denials, and averments, answering the complaint paragraph by paragraph.]

Wherefore defendant pray that the complaint in this proceeding be dismissed.

THE ——— RAILROAD COMPANY,  
By ———,

\_\_\_\_\_  
[Title of officer.]

No. 3.

## Intervening Petition.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

_____	_____	} Docket No. _____.
vs.	_____	

Comes now your petitioner, \_\_\_\_\_, and respectfully represents that he has an interest in the matters in litigation in the above-entitled proceeding and moves that he may be allowed to intervene in and become a party to said proceeding, and for cause of intervention says:

I. That [intervener should here state nature and place of business, and whether a corporation, firm, or partnership, etc.].

II. [Intervener should here set out specifically its interest in the above-entitled proceeding in accordance with the last paragraph of Rule II of the rules of practice.]

Wherefore said \_\_\_\_\_ prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at \_\_\_\_\_, 19—.

\_\_\_\_\_  
[Intervener's signature.]

No. 4.

## Petition for Rehearing.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

_____	_____	} Docket No. _____.
vs.	_____	

Comes now the complainant [or defendant] in the above-entitled proceeding and respectfully petitions the Commission to grant a rehearing therein, and in support of said petition respectfully shows:

I. [Here set out specifically the matters claimed to be erroneously decided, with a brief statement of the alleged errors, in conformity with Rule XV of the rules of practice.]

Wherefore petitioner prays that a rehearing be granted in the above-entitled case and that the Commission enter such further order or orders in the premises as to it may seem reasonable and just.

Dated at \_\_\_\_\_, 19—.

\_\_\_\_\_  
[Petitioner's signature.]

No. 5.

## Form of Reparation Statement Under Rule V.

Claim of Richard Roe under decision in Docket No. —.

Date of delivery.	Car initials and number.	Origin.	Destination.	Route.	Commodity.	Weight.	As charged		Should be.		Reparation claimed.
							Rate.	Amount.	Rate.	Amount.	
Dec. 10, 1912	N. Y. & N. H., 79173	Chicago, Ill.	Provo, Utah	C. G. W., U. P., O.S.L., S.F.L.A.	Scoured wool, c. 1	21,009	\$3.67½	\$772.08	\$2.25	\$472.70	\$299.38
Mar. 29, 1913	S. R. L., 6769	.....do.....	.....do.....	.....do.....	.....do.....	11,256	3.67½	413.65	2.25	276.41	137.24
Oct. 7, 1913	C. E. I., 60288	.....do.....	.....do.....	.....do.....	.....do.....	12,700	3.67½	466.73	2.25	321.97	144.76
Oct. 7, 1913	O. W. R. & N., 10248	.....do.....	.....do.....	C. N. W., U. P., O.S.L., S.F.L.A.	.....do.....	15,300	3.67½	562.28	2.25	344.25	218.03
Jan. 27, 1914	C. M. & P. S., 206853	.....do.....	.....do.....	.....do.....	.....do.....	24,100	3.67½	885.67	2.25	525.03	360.64
								\$3,100.41		\$1,940.36	\$1,160.05

JOHN DOE,  
Attorney for Richard Roe.

I hereby certify that this statement has been checked against the records of this company and found correct.

November 10, 1915.

JOHN SMITH,  
Auditor, X. Y. Z. Ry. Co.





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